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Supreme Court, U.S.
FILED

No. 97-1708

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In The

Supreme Court of the United States

October Term, 1997

Bruce Ryan Nakamura,

Petitioner

v.

Theodore Chun, MD,
The Queen's Medical Center,
Virginia Frelander, RN,
Sandra Proehl, RN

Respondents.

Petition for Writ of Certiorari to the
Hawaii Supreme Court

PETITION FOR WRIT OF CERTIORARI

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27 MP

QUESTION PRESENTED

Should tort defendants be allowed to dismiss with prejudice, a trial scheduled prima facie complaint of injury, for want of inadmissible evidence having no defense probative value?

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THE SUMMARY DISPOSITION ORDER OF THE INTERMEDIATE COURT OF APPEALS OF THE STATE OF HAWAII ENTERED ON NOVEMBER 20, 1997, AND THE ORDER OF THE HAWAII SUPREME COURT ENTERED ON JANUARY 16, 1998 ARE IN CONFLICT WITH A DECISION BY THE UNITED STATES SUPREME COURT; ALSO ARE IN CONFLICT WITH APPELLATE COURTS OF OTHER DISTRICTS; FURTHER ARE IN CONFLICT WITH THEIR OWN PREVIOUS DECISIONS.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Bruce Ryan Nakamura respectfully prays that a writ of certiorari be issued to review the Order of the Hawaii Supreme Court entered into this proceeding on January 16, 1998.

OPINIONS BELOW

A Summary Disposition Order by the Intermediate Court of Appeals of the State of Hawaii was entered on November 20, 1997 affirming the Amended Judgment of the Circuit Court of the First Circuit, State of Hawaii, entered on March 29, 1995, which dismissed with prejudice, petitioner's trial scheduled prima facie medical malpractice complaint, supported by a medical doctor's opinion and the petitioner's medical records, prior to trial for want of inadmissible evidence having no defense probative value.

Petitioner's Motion For Reconsideration of the November 20, 1997 Summary Disposition Order was denied by the Intermediate Court of Appeals of the State of Hawaii and entered on December 9, 1997.

Petitioner's Petition for Writ of Certiorari to the Intermediate Court of Appeals of the State of Hawaii was denied by the Hawaii Supreme Court and entered on January 16, 1998.

STATEMENT OF JURISDICTION

The United States Supreme Court's jurisdiction to consider civil cases in the courts of appeals is invoked pursuant to 28 U.S.C. §1257 as of January 16, 1998.

STATUTORY PROVISIONS INVOLVED

1st, 7th, and 14th Amendments under the United States Constitution

Title 42 U.S.C. Chapter 21 §§1983, 10801, 10802

STATEMENT OF THE CASE

This is a medical malpractice action. Petitioner Bruce Ryan Nakamura's complaint is that Respondents Theodore Chun, MD, Virginia Frelander, RN, and Sandra Proehl, RN, force medicated and disabled him while he was involuntarily under their care and treatment at The Queen's Medical Center psychiatric ward from May 9 to May 20, 1989 and was unable to leave the locked psychiatric ward to save his health. Petitioner's assertion is that because he was not free to walk away from the adverse circumstances, the respondents exposed themselves to de facto strict liability completely separate from the respondents' issue of discovery of inadmissible evidence. Petitioner also claims that by force medicating and disabling him, the respondents violated his Federal civil rights guaranteed to him by the United States Constitution as stated in Title 42 Chapter 21 of the United States Code, Sections 1983, 10801, and 10802.

Section 1983 headlined Civil action for deprivation of rights, states:

> *"Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."*

Section 10801 headlined Congressional findings and statement of purpose, reads: *"(a) The Congress finds that - (1) mentally ill individuals are vulnerable to abuse and serious injury."*

Section 10802 headlined Definitions, reads:

> *"For purposes of this title [42 USCS §§10801 et seq.]: (1) The term 'abuses' means any act or failure to act*

by an employee of a facility rendering care or treatment which was performed, or which was failed to be performed, knowingly, recklessly, or intentionally, and which caused, or may have caused, injury to a mentally ill individual . . . ."

Petitioner also asserts that by dismissing his prima facie complaint, Circuit Court Judge Wendell K. Huddy, also referred to as Judge Huddy, violated petitioner's 7th Amendment right to trial by jury and that this point was brought before the Intermediate Court of Appeals in petitioner's Reply Brief filed August 24, 1995, and in his Motion for Reconsideration denied on December 9, 1997. Petitioner also asserts that when Judge Huddy dismissed his prima facie complaint for want of inadmissible evidence having no defense probative value, Judge Huddy deprived petitioner of his right to due process guaranteed by the 14th Amendment of the United States Constitution. Petitioner further asserts that his 1st Amendment right to Freedom of Speech protected by the United States Constitution was violated by the respondents. All of these Federal civil rights points, the 1st, 7th, 14th Amendment rights, Title 42 Chapter 21 §§ 1983, 10801, and 10802 rights, were brought to the attention of the Hawaii Supreme Court in petitioner's Petition for Writ of Certiorari to the Intermediate Court of Appeals of the State of Hawaii, denied and order entered on January 16, 1998.

MAJOR EVENTS IN THIS CASE

A POLICE OFFICER COMMITTED CONTEMPT OF COURT.

On the night of May 8, 1989, petitioner was taken involuntarily to The Queen's Medical Center for psychiatric observation by the police. At the admissions desk petitioner alleges that Officer Gary G. Goeas told him that the handcuffs wouldn't be removed unless petitioner agreed to sign the admission form for so-called "*voluntary*" admission.

Officer Gary G. Goeas, also referred to as Officer Goeas, was supposed to answer questions on November 26, 1994 by way of an oral deposition about his condition of removing petitioner's handcuffs. However, Officer Goeas was absent without leave of court from his deposition and filed no motion to quash subpoena.

On the morning of May 9, 1989, petitioner alleges that Theodore Chun, MD, also referred to as Dr. Chun, loudly, harshly, and sternly told petitioner,

> *"WE CAN DO THINGS THE EASY WAY! YOU CAN VOLUNTEER FOR THE TREATMENT OR I'M GOING TO TAKE YOU TO COURT AND MAKE YOU!!!"*

At his deposition held on January 27, 1994, Dr. Chun said,

> *"I told you at the beginning when I saw you that you could sign into the hospital voluntarily, and that if you did not, that we could go to court and let the judge decide whether you needed to be in the hospital or not."*

Dr. Chun's statement corroborates petitioner's claim that he was threatened with court action into supposedly *"volunteering"* for Dr. Chun's treatment. Petitioner did not want to take medicine because he was worried about permanent adverse side effects. Petitioner tried to refuse medicine but Dr. Chun, Virginia Frelander, RN, and Sandra Proehl, RN, knowingly, recklessly, and intentionally forced him to take medicine, in particular, Haldol. All treatment petitioner received at The Queen's Medical Center from May 9 to May 20, 1989 was under duress of Dr. Chun's threat to take petitioner to court if he didn't supposedly *"volunteer"* for Dr. Chun's treatment.

In the end, petitioner's worries about medication damage came true. Today at age 45, he is disabled with constant fatigue, developed senile (old age type) cataracts at age 43, and since May 1989, sleep is no longer easy, restful, or

restorative. There is no known history of anyone in petitioner's biological family developing cataracts until after attaining the age of 65+ years.

A JUDGE APPROVED OF A WITNESS COMMITTING CONTEMPT OF COURT.

In the course of prosecuting his medical malpractice complaint, Petitioner brought up his understanding that the Honolulu Sears, Roebuck, and Company store, also referred to as Sears, made a security videotape of him and covertly distributed his picture from the videotape through security channels around town with libelous documentation indicating that the petitioner was to be considered an undesirable person to have on the premises. The result was a series of attempts by University of Hawaii library security employees to drive petitioner out of the building. The personnel manager of that Honolulu Sears store, Stanley Nako, was subpoenaed by petitioner to come to an oral deposition to answer questions about this matter. Stanley Nako and Sears, did not call or write petitioner, failed to appear for the deposition, and did not file a motion to squash subpoena. Subsequently, petitioner filed a motion to compel Mr. Nako to come to an oral deposition. Neither Mr. Nako nor anyone on behalf of Sears showed up for the motion to compel hearing. No papers were filed in opposition to the motion to compel hearing. Sears and Mr. Nako completely ignored petitioner's motion to compel papers as there were no phone calls or letters from Mr. Nako or Sears regarding this hearing. Circuit Court Judge Wilfred K. Watanabe, also referred to as Judge Watanabe, denied petitioner's motion to compel without explanation, even though Judge Watanabe was bound by Hawaii Revised Statute 602-11 to abide by Rule 37 of the Hawaii Rules of Civil Procedure titled: "Failure to make discovery: Sanctions." This outcome struck petitioner as shockingly wrong.

Hawaii Revised Statute 602-11 reads:

> "**Rules.** The supreme court shall have power to promulgate rules in all civil and criminal cases for all courts relating to process, practices, procedure and appeals, which shall have the force and effect of law."

Rule 1 of the Hawaii Rules of Civil Procedure reads:

> "**SCOPE OF RULES.** These rules govern the procedure in the circuit courts of the State in all suits of a civil nature whether cognizable as cases at law or in equity . . . ."

During the discovery proceedings petitioner introduced as prima facie evidence two audio tapes. One audio tape spoke about the aforementioned security video tape of the petitioner recorded by the Honolulu Sears branch. The other audio tape stated that an agency of the government was involved in petitioner's life. On both of these audio tapes, nothing was said about medical malpractice or force medication, and no respondent was named or even implied. Petitioner declined to name the voices on the audio tapes because he was worried that the identity protected voices might get anonymous threatening telephone calls. The identity protected voices were not physical witnesses to petitioner's treatment by the respondents, nor are they medical doctors.

On May 20, 1994 Judge Melvin K. Soong also referred to as Judge Soong heard the motion of the respondents filed May 4, 1994 to compel petitioner to answer interrogatories about the audio tapes, in particular the identities of the voices. Judge Soong questioned William A. Bordner, the lawyer arguing for respondent The Queen's Medical Center as follows:

> *"The Court: And so I don't know, Mr. Bordner, from that standpoint, whether all that you allege on the failure of the plaintiff to respond to these interrogatories are so all-encompassing so that you are unable to prepare for your defense.*

Mr. Bordner: I understand what the Court's concern is. I'd be happy to submit another motion explaining the context of these particular interrogatories so that it's clear that lesser sanctions would not be sufficient to ameliorate the problem created by Mr. Nakamura's refusal to obey Court orders. If the Court would like that explained in more detail, I will do that.

The Court: Why? Because I don't know whether the failure to respond to these interrogatories is such that, again, it prevents the defendants from preparing for this case."

It can be seen that Judge Soong strongly doubted the need of the respondents for the names of the identity protected voices to prepare their defense.

As the result of this May 20, 1994 hearing, Judge Soong declared the audio tapes inadmissible and sanctioned petitioner $500.00 which was timely paid, for protecting the voices from possible threats by not naming them. As petitioner continued to prosecute his case, petitioner agreed not to use the audio tapes at further depositions to satisfy the respondents, but his trial scheduled prima facie case of medical malpractice was dismissed with prejudice by Judge Wendell K. Huddy because petitioner declined to name the identity protected voices to shield them from possible threats despite failure of the respondents to show how the audio tapes had defense probative value regarding medical malpractice. If either of these audio tapes spoke of medical malpractice or force medication, or identified or implied knowledge of any of the respondents, petitioner would have identified the voices.

REASONS FOR GRANTING THE WRIT

ALLOWING TORT DEFENDANTS TO DISMISS A PRIMA FACIE COMPLAINT FOR WANT OF INADMISSIBLE EVIDENCE HAVING NO DEFENSE PROBATIVE VALUE IS CLEARLY AGAINST REASON AND DAMAGES SOCIETY'S RESPECT FOR THE JUDICIAL SYSTEM.

The confidence of the citizenry in the judicial system, and the ability of the judicial system to elicit the voluntary compliance of the populace with the laws of the country, are predicated upon the belief of the people that the judicial system is equitable, just, and fair.

THIS IS A PRIMA FACIE CASE OF MEDICAL MALPRACTICE.

In his Discharge Summary dictated May 20, 1989, Dr. Chun wrote: *"**The patient** lacked insight and **initially refused medication.** He **grudgingly** took his medication after some **persuasion**."* The **persuasion** is Dr. Chun's threat to take petitioner to court if petitioner didn't supposedly "*volunteer*" for Dr. Chun's treatment. *"Because of his **resistance to taking medication, it was decided to start the patient on Haldol Decanuate** . . . . Although he was **resistive** . . . **[O]n a daily basis the patient would ask for discharge** . . . ."* (Bold emphasis by petitioner)

THEODORE CHUN, MD COMMITTED DE FACTO KIDNAPPING.

The longest Dr. Chun could have lawfully held petitioner against his will inside The Queen's Medical Center was 48 hours. Yet despite being asked by petitioner "*on a daily basis*" to be released, **Dr. Chun refused to release petitioner and thereby committed de facto kidnapping.**

Dr. Chun further dictated:

"He also continued to ask that his medication be cut in half and even went to the point of refusing to take a whole tablet of the Haldol and Cogentin and had the nurse give him half a tablet before he would take it. Because of this, it was decided to give him another cubic centimeter of Haldol Decanuate on 05/18/89 . . . ." (Bold emphasis by petitioner)

Petitioner's medical doctor expert Dr. Richard Rappaport opined:

"In regard to the patient's being given the medication, Haldol, without his permission and despite the fact that he refused the medication, the following remarks must be made: ***The law in Hawaii states that a patient has the right to refuse treatment even if he is a voluntary patient in a hospital.*** (bold emphasis by petitioner) *Bruce Nakamura felt that he was forced to accept hospitalization and medication that he did not want even though it may have been appropriate for him. But, since he had the right to refuse, he should have been treated with respect for those rights and not threatened or treated with force unless he was considered dangerous. If the patient was dangerous, then forced admission and forced treatment are appropriate in the form of restraints and IM [intramuscular] medication, but only on an emergency basis. If the patient continues to refuse treatment, the patient should be examined to determine his competency to exercise his right of refusal, or should be entered into the legal process of obtaining a waiver of that right so that the doctor can then treat the patient. If the doctor does not want to proceed through these alternatives, he should discharge the patient, AMA (against medical advice). However, whatever method he chooses to deal with the reluctant patient, he must record all the events*

with an explanation as to his thinking in making the various choices. All of this is especially important and essential in dealing with a delusional disordered patient even if the medication is appropriate, because such patients are by the nature of their illness, suspicious and do not see themselves as ill.

The correct procedure was not observed by the medical staff in that the proper forms were not filled out, notations not properly made in the records and the thinking of the staff was not documented as to why the patient was given the medication without his non-threatened agreement. There are, in fact, some statements in the medical records, including the discharge summary, which indicate that the patient refused medication. However, the only compliance by the staff with that refusal was to give the patient, at one point, a half a dosage. (Bold emphasis by petitioner) *Otherwise there is no indication as to why the staff went ahead and gave the patient oral medication, as well as IM medication on two occasions."*

Respondents never hired an expert to rebut Dr. Richard Rappaport's opinion. Dr. Chun's Discharge Summary and Dr. Rappaport's opinion established a prima facie case of medical malpractice.

THE ORDERS BY THE INTERMEDIATE COURT OF APPEALS OF THE STATE OF HAWAII AND THE HAWAII SUPREME COURT CONFLICT WITH THE UNITED STATES SUPREME COURT.

The Summary Disposition Order entered November 20, 1997 by the Intermediate Court of Appeals of the State of Hawaii, and the denial by the Hawaii Supreme Court of petitioner's Petition for Writ of Certiorari to the Intermediate Court of Appeals of the State of Hawaii, entered on January

16, 1998 are directly contrary to the decision of The United States Supreme Court which opined that "[A] *person's right to his day in court is basic to our very system of jurisprudence." In re Oliver,* 333 U.S. 257, 68 S. Ct. 499, 92 L.Ed. 682 (1948).

THE SUMMARY DISPOSITION ORDER OF THE INTERMEDIATE COURT OF APPEALS OF THE STATE OF HAWAII CONFLICTS WITH ITS OWN DECISIONS.

In *Mendes, Sr. v. Hawaii Insurance Guaranty Association,* Haw. App. Slip Op. #19932 (February 11, 1998) the Intermediate Court of Appeals of the State of Hawaii opined that:

> *"Where the unambiguous language of the statute mandates a particular result, we are bound to follow it. For the above reasons, we vacate in part the circuit court's judgment dismissing count I of Mendes' complaint and remand for further proceedings."*

THE INTERMEDIATE COURT OF APPEALS OF THE STATE OF HAWAII FAILED TO ABIDE BY THE UNAMBIGUOUS LANGUAGE OF THE STATUTE.

Hawaii Revised Statute 626-1 reads: "**Enactment.** The Hawaii Rules of Evidence as set forth in this section is enacted."

Rule 101 of the Hawaii Rules of Evidence reads: "**Scope.** These rules govern proceedings in the courts of the State of Hawaii . . . ."

The Intermediate Court of Appeals of the State of Hawaii was bound by law to evaluate the probative need of the respondents to know the names of the identity protected voices in accordance with Hawaii Rules of Evidence 401, and 402, defining relevance, and 403-2A (1) & (2) defining the meaning of probative value.

Rule 401 from the Hawaii Rules of Evidence Manual reads:

> "Definition of 'relevant evidence.' 'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

The last sentence of Rule 402 reads: "Evidence which is not relevant is not admissible." Judge Soong ruled that the audio tapes were inadmissible. Logically then, it can be understood that the audio tapes are irrelevant to the medical malpractice action. Please recall that Judge Soong expressed strong skepticism that the respondents needed answers to their interrogatories about the audio tapes to prepare their defense.

Rule 403-2A (1) of the Hawaii Rules of Evidence Manual reads:

> "*Meaning of 'probative value.'* On the admissibility side of the balance, 'probative value' is a compound concept, comprising the degree of relevance to prove one or more disputed facts plus the element of need."

Rule 403-2A (2) reads:

> *"Probative value includes need.* Probative value is a function not only of relevancy, but also of need for the evidence. Need assessment has perhaps three elements: (a) the centrality or relative importance of the fact to be inferred in the overall context of the lawsuit; (b) the degree to which the fact to be inferred is actually disputed; and (c) the availability and quality of other evidence tending to prove the same point."

Judge Wendell K. Huddy's dismissal with prejudice decision was so totally devoid of evidentiary or logical

support showing how the audio tapes have defense probative value regarding medical malpractice so as to render Judge Huddy's decision unconstitutional under the due process clause of the 14th Amendment. The Intermediate Court of Appeals of the State of Hawaii and the Hawaii Supreme Court failed to evaluate the compatibility of Judge Huddy's order dismissing petitioner's prima facie complaint with prejudice, in accordance with the definition of probative value as defined by the Hawaii Rules of Evidence 401, 402, 403-2A (1) and (2) as the courts were bound by Hawaii Revised Statute 626-1 to do, and thus the failures to so evaluate, were plain errors violating petitioner's Federal civil rights. There is no way the Intermediate Court of Appeals of the State of Hawaii and the Hawaii Supreme Court can show that their orders were based upon a construction applying Hawaii Rules of Evidence 401, 402, and 403-2A (1) & (2) that both courts were bound to abide by as required by Hawaii Revised Statute 626-1. Petitioner pointed out to the Intermediate Court of Appeals of the State of Hawaii that the voices on the audio tapes were not physical witnesses to what happened at The Queen's Medical Center and are not medical doctors, so the voices CANNOT offer even a lay opinion as to Dr. Chun's diagnosis of delusions or whether force medication took place.

In *Azer v. The Courthouse Racquetball Corp., 9 Haw. App. 530, 539, 540, 852 P.2d. 75, 77* (1993) The Intermediate Court of Appeals of the State of Hawaii opined:

> *"A trial court abuses its discretion whenever it exceeds the bounds of reason or disregards rules or principles of law or practice to the substantial detriment of a party.*
>
> *Dismissal of a pending action by the trial court with prejudice is not favored. A full trial on the merits is favored."*

Petitioner contends that Judge Huddy's dismissal of a prima facie case of medical malpractice with prejudice for want of inadmissible evidence having no defense probative

value is abuse of discretion. When an objective person considers the whole picture of petitioner's goal of protecting the unnamed audio tape voices from getting possible threats; his timely paying a $500.00 sanction for protecting the voices; given that Judge Soong declared inadmissible the audio tapes which do not speak of medical malpractice or force medication or name any of the respondents; given that Judge Soong clearly doubted that the respondents would be hampered in their defense because they did not have the audio tape information that they wanted; given that petitioner agreed not to use the inadmissible audio tapes at future depositions; and given petitioner's active prosecution of his complaint; that petitioner did not name the identity protected voices, cannot be contextually judged contumacious conduct deserving of dismissal with prejudice.

The failures of the Intermediate Court of Appeals of the State of Hawaii and Hawaii Supreme Court to recognize that Judge Huddy's dismissal with prejudice decision as abuse of discretion were plain errors that failed to protect petitioner's Federal civil rights.

CONFLICT WITH A HAWAII SUPREME COURT DECISION

In *Lim v. Harvis Construction, Inc.*, 647 P.2d 290 (1982) the Hawaii Supreme Court opined:

> *"Where it is not shown that the plaintiff was guilty of deliberate delay or contumacious conduct nor that the defendants were actually prejudiced by a delay in bringing the case to trial, dismissal of the complaint is too harsh a sanction to be applied."*

On August 25, 1993, Judge Wilfred K. Watanabe heard petitioner's Motion For An Order To Compel Queen's Medical Center To Comply With Plaintiff's First Request For Production Of Documents filed August 6, 1993. Lawyer J. Gerard Lam on behalf of The Queen's Medical Center wrote in his opposition memorandum,

"Insofar as Plaintiff's request relates to records regarding Dr. Chun, no such records exist since Dr. Chun was not an employee of QMC -- a fact well-known to Plaintiff."

Judge Watanabe did not agree and ordered The Queen's Medical Center to forward to petitioner documents in its possession about Dr. Chun. Subsequently, 163 pages about Dr. Chun that The Queen's Medical Center falsely said did not exist were produced by the hospital. However petitioner was still of the opinion that documents were missing because examination of the papers from the files of the petitioner, Theodore Chun, MD, Virginia Frelander, RN, and Sandra Proehl, RN, revealed no indication that a complaint against any of the respondents alleging force medication had been made or that a lawsuit had been filed.

On September 17, 1993 a discovery conference was held in the chambers of Circuit Court Judge Melvin K. Soong. Petitioner repeatedly brought up the topic of missing hospital documents, but Judge Soong failed to question the hospital's lawyer about this subject. Despite petitioner repeatedly asking Judge Soong during the discovery conference about documents missing from the papers turned over to petitioner by The Queen's Medical Center, Judge Soong played deaf and never answered petitioner's repeated questions about missing documents. The discovery conference was a waste of time, nothing came of it.

Thereafter, petitioner's expert Dr. Richard Rappaport wrote an opinion dated July 25, 1994 as follows:

"Dear Mr. Nakamura:

It is my opinion that a patient's hospital records, or a file on a patient at that hospital, should contain copies of complaints made against that hospital should such exist. Litigation in particular should cause a record to be created and that record should be a part of the patient's record or file.

The records you sent to me on your case, against Quinn (sic) Medical Center, did not show that your complaint or suit had been filed. The absence of such, had it been sent and received by the hospital, indicates an omission (negligence) or a washing of the records (an illegal act) and both are below the standard of care for a hospital psychiatric department."

Dr. Rapapport's July 25, 1994 letter was submitted to Judge Huddy, in petitioner's Motion For An Index Of All Documents In The Possession Of The Queen's Medical Center filed on August 22, 1994 and heard by Judge Huddy on October 19, 1994. During this hearing, Judge Huddy did not ask The Queen's Medical Center to explain away Dr. Rappaport's opinion that documents were missing. In the end, Judge Huddy ordered The Queen's Medical Center to make an index for his eyes only, which indicated that he had his questions about the documentation inventory, and denied petitioner's motion for an index. After serving The Queen's Medical Center with FOUR requests for production of documents, there can only be one reason why documents are missing, and that is that those missing documents tend to show that the respondents committed medical malpractice and so were withheld from petitioner, which would be contumacious conduct and contempt of court; or destroyed which would be illegal and contempt of court; or were never created, which would be conduct below the standard of care. Certainly those missing documents do not prove the innocence of the respondents. Again, the Queen's Medical Center is either negligent in failing to create the documents that Dr. Rappaport opined were missing, or washed the records which is an illegal act, or guilty of evasive contumacious delaying contempt of court conduct by withholding documents that are directly related to petitioner's complaint and have prima facie admissibility; as compared to the inadmissible audio tapes which do not speak of force medication or medical malpractice or name or imply knowledge of any of the respondents. The failure by

the Hawaii Supreme Court to recognize that Judge Huddy's dismissal with prejudice decision was too harsh and in conflict with its decision in *Lim v. Harvis Construction Inc.*, was plain error which failed to protect petitioner's Federal civil rights.

CONFLICT WITH OTHER APPELLATE COURTS

The Court of Appeals of Michigan ruled in *Houston v. Southwest Detroit Hospital*, 420 N.W.2d 835, 836 (Mich.App. 1987) *"[T]hat trial court could only dismiss with prejudice after evaluating all options on record and concluding what option was justice and proper."* On page 838 the Court of Appeals of Michigan quoted from *Higgins v. Henry Ford Hospital, 384 Mich. 633, 637, 186 N.W.2d 337 (1971).*

> " 'Rules of practice and procedure are exactly that. They should create no rights and should be thought of as indicating the way in which justice should be administered. They should give direction to the process of administering justice *but their application should not become a fetish to the extent that justice in an individual case is not done.* There is a need for guides and standards. They must be followed but they must always be thought of as *guides and standards to the means of achieving justice, not the end of justice itself.' "* (Emphasis in original)

Also on October 19, 1994 the respondents' motion for dismissal was heard by Judge Wendell K. Huddy. Since the audio tapes were already ruled inadmissible by Judge Soong on May 20, 1994, further inquiry about the names of the identity protected voices was moot. Again, please recall that Judge Soong doubted that the respondents needed answers to their audio tape interrogatories to prepare their defense. Judge Huddy and the respondents NEVER asked petitioner about whether the identify protected voices were physical witnesses to petitioner's treatment at The Queen's

Medical Center and NEVER asked if the identity protected voices are medical doctors. Instead, during the October 19, 1994 hearing, Judge Huddy shocked petitioner by conducting discovery on behalf of the respondents by asking petitioner during the hearing if he had other audio tapes, a question that the respondents never asked, which indicated that Judge Huddy had a fetish about possible additional audio tapes. Judge Huddy did not conduct the hearing in an equitable manner.

In *Beck v. Wings Field Inc. C.C.A.Pa., 122 F.2d 114 (1941)* the court opined that abuse of discretion was *"A discretion exercised to an end or purposes not justified by and clearly against reason and evidence."* Judge Huddy's dismissal of petitioner's complaint was abuse of discretion because his decision, not based upon defense probative value, was clearly against reason and evidence to the manifest detriment of the petitioner's Federal civil rights.

The Court of Civil Appeals of Texas, Houston (Fourteenth District) ruled in *Phillips v. Vinson Supply Company,* 581 S.W.2d 789, (1979) that *"[D]ismissal of an action for failure to comply with discovery order is without prejudice."* Judge Wendell K. Huddy dismissed petitioner's complaint with prejudice for want of inadmissible evidence having no defense probative value. Petitioner reasoned in his papers to Judge Huddy that whether the audio tapes are true or incorrect, force medication still could have occurred, hence there was no defense probative value. Judge Huddy's dismissal with prejudice order constituted abuse of discretion because his dismissal with prejudice order was clearly against reason to the manifest detriment of the petitioner's Federal civil rights.

The Court of Appeals of Texas, Amarillo ruled in *Moore v. Armour & Company, Inc.,* 660 S.W.2d 577, (Tex. App. 7 Dist. 1983) that:

> *"Where plaintiff had announced ready, secured a trial setting and stood ready to go to trial when his case was dismissed, dismissal of his personal injury suit was an abuse of discretion."*

Petitioner had basically completed his discovery, secured a trial setting, and was 80% prepared for trial. The bulk of petitioner's remaining work consisted of making exhibits. Both the Intermediate Court of Appeals of the State of Hawaii and the Hawaii Supreme Court denied petitioner his Federal right to trial by jury guaranteed by the 7th Amendment of the United States Constitution.

In *State v. Meiers*, *412 S.W.2d 478* (1967) the Supreme Court of Missouri opined that:

> *"[P]lain errors affecting substantial rights may be considered on motion for new trial or on appeal though not raised in trial court if manifest injustice or miscarriage of justice has resulted . . . ."*

In the contextual view of Dr. Chun committing de facto kidnapping and Dr. Rappaport's opinion that Haldol was administered to petitioner without petitioner's permission, this instant case is a prima facie complaint of medical malpractice TANTAMOUNT TO A CRIME. The failures by the Intermediate Court of Appeals of the State of Hawaii and the Hawaii Supreme Court to defend petitioner's 1st, 7th, and 14th Amendment rights in addition to his Title 42 Federal rights are plain errors that caused petitioner to suffer manifest injustice.

CONCLUSION

The Summary Disposition Order of the Intermediate Court of Appeals of the State of Hawaii entered on November 20, 1997 affirming Judge Huddy's dismissal with prejudice order entered on March 29, 1995, and the Hawaii Supreme Court's order denying certiorari to the Intermediate Court of Appeals of the State of Hawaii entered on January 16, 1998, do not have the construction to withhold review by the United States Supreme Court because the Intermediate Court of Appeals of the State of Hawaii and the Hawaii Supreme Court cannot show that the affirmation of Judge

Huddy's dismissal with prejudice order simultaneously affirmed petitioner's Federal civil rights guaranteed by the 1st, 7th, and 14th Amendments of the United States Constitution, as well as Title 42 Chapter 21 §§ 1983, 10801, and 10802, of the U.S. Code. Both the Intermediate Court of Appeals of the State of Hawaii and the Hawaii Supreme Court completely ignored petitioner's Federal civil rights points raised in his Reply Brief filed August 25, 1994, Motion For Reconsideration denied December 9, 1997, and Petition for Writ of Certiorari to the Intermediate Court of Appeals of the State of Hawaii, denied January 16, 1998.

There is also no evidence that the petitioner got the protection of Hawaii law in which his appeal was actually evaluated in accordance with the Hawaii Rules of Evidence, especially regarding the definition of probative value, as mandated by Hawaii Revised Statute 626-1.

In addition there were several plain errors including one decision approving of contempt of court by Stanley Nako without explanation, and the condoning by Judges Soong and Huddy of respondent The Queen's Medical Center either withholding documents in contumacious contempt of court, or negligently failing to create records that Dr. Rappaport opined were missing, or illegally washing the records, such that an objective person could only come to the following conclusions: (1) The decisions by the Intermediate Court of Appeals of the State of Hawaii and the Hawaii Supreme Court were in conflict with rulings by the United States Supreme Court, with a February 1998 decision by the Intermediate Court of Appeals of the State of Hawaii, a decision by the Hawaii Supreme Court, and other appellate courts. (2) The way petitioner's complaint was handled in the Circuit Court of the State of Hawaii, the Intermediate Court of Appeals of the State of Hawaii, and the Hawaii Supreme Court, was a series of abuses of discretion and/or plain errors blatantly and manifestly detrimental to the petitioner. (3) There is no evidence that the Intermediate Court of Appeals of the State of Hawaii or the Hawaii Supreme Court considered and protected petitioner's Federal civil rights guaranteed to him by the 1st, 7th, and

14th Amendments of the United States Constitution, and by Title 42 Chapter 21 §§ 1983, 10801, and 10802 of the U.S. Code. (4) Dr. Chun committed de facto kidnapping when he refused to release petitioner after 48 hours, despite petitioner asking on a daily basis to be discharged. (5) Based upon Dr. Chun's Discharge Summary and Dr. Rappaport's opinion, there is probable cause to believe that the way respondents treated petitioner was TANTAMOUNT TO A CRIME. (6) The justices of the Intermediate Court of Appeals of the State of Hawaii and the Hawaii Supreme Court failed to evaluate petitioner's appeal in accordance with the Hawaii Rules of Evidence that the courts are bound by Hawaii Revised Statute 626-1 to follow, and that this failure torpedoed a meritorious prima facie complaint of medical malpractice that was TANTAMOUNT TO A CRIME. (7) Tort defendants can dismiss a prima facie complaint with prejudice for want of inadmissible evidence having no defense probative value. (8) Petitioner suffered a miscarriage of justice when his prima facie complaint of medical malpractice TANTAMOUNT TO A CRIME was dismissed with prejudice for want of inadmissible evidence having no defense probative value.

The Intermediate Court of Appeals of the State of Hawaii and the Hawaii Supreme Court need guidance from the United States Supreme Court as to what is justifiable dismissal that does not conflict with the decisions of the United States Supreme Court, other appellate courts, and with the decisions of the Intermediate Court of Appeals of the State of Hawaii as well as the Hawaii Supreme Court themselves, while simultaneously protecting and affirming the Federal civil rights of the people.

The Intermediate Court of Appeals of the State of Hawaii and the Hawaii Supreme Court also need admonition to abide with Hawaii Revised Statute 626-1 mandating court compliance with the Hawaii Rules of Evidence. The Intermediate Court of Appeals of the State of Hawaii and the Hawaii Supreme Court further need a reminder that citizens of the State of Hawaii are also citizens of the overall Federal republic with Federal civil rights guaranteed to them by the

United States Constitution and Title 42 Chapter 21 §§ 1983, 10801, and 10802 of the U.S. Code.

It denigrates the reputation and integrity of the entire judicial system, both at the national and state level, to allow tort defendants to dismiss a prima facie complaint of injury tantamount to a crime, for want of inadmissible evidence having no defense probative value. Therefore it is respectfully requested that this Petition for Writ of Certiorari to the Hawaii Supreme Court be granted, or in the alternative, summary reversal orders be issued: (1) vacating the Order entered by the Hawaii Supreme Court on January 16, 1998; (2) vacating the Summary Disposition Order entered by the Intermediate Court of Appeals of the State of Hawaii on November 20, 1997; and (3) ordering petitioner's case remanded back to the Circuit Court of the State of Hawaii for trial scheduling.

Respectfully submitted,

Bruce Ryan Nakamura
2142-A Mauna Place
Honolulu, HI 96822
(808) 599-4884

(2)

Supreme Court, U.S.
FILED

No. 97-1708 APR 15 1998

OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1997

Bruce Ryan Nakamura,

Petitioner

v.

Theodore Chun, MD,
The Queen's Medical Center,
Virginia Frelander, RN,
Sandra Proehl, RN

Respondents.

Petition for Writ of Certiorari to the
Hawaii Supreme Court

APPENDIX

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APP

APPENDIX A

No. 18890

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

Bruce Ryan Nakamura

Plaintiff-Appellant

v.

Theodore Chun, MD,
The Queen's Medical Center,
Virginia Frelander, RN,
Sandra Proehl, RN

Defendants-Appellees

SUMMARY DISPOSITION ORDER

In accordance with Hawai'i Rules of Appellate Procedure Rule 35, and after carefully reviewing the record and the briefs submitted by the parties, and duly considering and analyzing the law relevant to the arguments and issues raised by the parties,

IT IS HEREBY ORDERED that the Amended Judgment from which the appeal is taken, filed on March 29, 1995, is affirmed.

Dated: Honolulu, Hawai'i, November 20, 1997.

s/ Corinne K. A. Watanabe, Justice

s/ Simeon R. Acoba, Justice

s/ Walter S. Kirimitsu, Justice

APPENDIX B

No. 18890

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

Bruce Ryan Nakamura

Plaintiff-Appellant

v.

Theodore Chun, MD,
The Queen's Medical Center,
Virginia Frelander, RN,
Sandra Proehl, RN

Defendants-Appellees

ORDER DENYING PLAINTIFF-APPELLANT'S MOTION FOR RECONSIDERATION

Upon consideration of Plaintiff-Appellant's Motion For Reconsideration filed on December 1, 1997, the motion is hereby denied.

DATED: Honolulu, Hawai'i, December 9, 1997.

s/ Corinne K. A. Watanabe, Justice

s/ Simeon R. Acoba, Justice

s/ Walter S. Kirimitsu, Justice

APPENDIX C

No. 18890

IN THE SUPREME COURT

OF THE STATE OF HAWAII

Bruce Ryan Nakamura

Petitioner-Appellant

v.

Theodore Chun, MD,
The Queen's Medical Center,
Virginia Frelander, RN,
Sandra Proehl, RN

Respondents-Appellees

ORDER

Petitioner-Appellant Bruce Ryan Nakamura's Application for Writ of Certiorari filed on January 8, 1998 is hereby denied.

DATED: Honolulu, Hawai'i, January 16, 1998.

s/ Ronald T. Y. Moon, Chief Justice

Supreme Court, U.S.
FILED
MAY 20 1998
OFFICE OF THE CLERK

(3)

No. 97-1708

In The

Supreme Court of the United States

October Term, 1997

BRUCE RYAN NAKAMURA,

Petitioner,

v.

THEODORE CHUN, M.D., THE QUEEN'S MEDICAL CENTER, VIRGINIA FRELANDER, RN, SANDRA PROEHL, RN,

Respondents.

On Petition For Writ Of Certiorari To The Hawaii Supreme Court

RESPONDENTS' JOINT BRIEF IN OPPOSITION

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87 pp

QUESTIONS PRESENTED

1. Does this case present issues appropriate for this Court's review under a writ of certiorari?

2. Whether the Hawaii Supreme Court correctly denied the Petition for Writ of Certiorari on the Intermediate Court of Appeals' Summary Disposition Order in favor of Respondents and against Petitioner affirming the trial court's dismissal with prejudice of Petitioner's Complaint for failure to obey discovery orders?

PARTIES TO THE PROCEEDING

The Petition for Writ of Certiorari accurately lists the parties to the proceeding.

Pursuant to Rule 29.6 of the Rules of the Supreme Court of the United States, Respondent The Queen's Medical Center discloses as follows: The parent company of The Queen's Medical Center is The Queen's Health Systems. It holds as wholly or partly owned subsidiaries the following:

Comprehensive Home Care
CareResource Hawaii
Mid-Pacific Rehabilitation Centers, Inc.
Centralized Verification Services, Inc.
Pacific Radiopharmacy, Ltd.

Other wholly or partially owned subsidiaries of The Queen's Medical Center's parent company include the following:

Queen's International Corporation
Queen's Managed Care Plans
  Managed Care Management, Inc.
  The Queen's Health Care Plan,
  Independent Physicians Association
  dba Queen's Health Care
  Island Care dba Queen's Island Care
  QPH Health
Molokai General Hospital
Queen Emma Community Health
The Queen Emma Foundation
  The Queen Emma Corporation

PARTIES TO THE PROCEEDING – Continued

Queen Emma Industrial Corporation
Kumohana Industrial Corporation
The QHS Insurance Company
Queen's Development Corporation
Diagnostic Laboratory Services, Inc.
Queen's Health Technologies, Inc. dba Medical Equip. Svcs. of Hawaii
Kidney Stone Center of the Pacific
Leeward Radiation Oncology
Ambulatory Services, Inc. dba The Queen's Health Care Centers

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I. OPINIONS BELOW

The following are the opinions and judgments delivered by the courts below at issue in the Petition for Writ of Certiorari ("Petition"):

March 29, 1995	**Amended Judgment** on the Complaint in the Circuit Court of the First Circuit, State of Hawaii in favor of Defendant Queen's Medical Center, Virginia Frelander, R.N., Sandra Proehl, R.N. and Theodore Chun, M.D. and against Plaintiff Bruce Ryan Nakamura (attached as Appendix 1);
November 20, 1997	Intermediate Court of Appeals of the State of Hawaii **Summary Disposition Order** affirming the Amended Judgment of the Circuit Court.
December 9, 1997	Intermediate Court of Appeals of the State of Hawaii **Order Denying Plaintiff-Appellant's Motion for Reconsideration**
January 16, 1998	Hawaii Supreme Court **Order** denying Petitioner-Appellant's petition for writ of certiorari

II. STATEMENT OF JURISDICTION

Bruce Ryan Nakamura ("Petitioner") seeks to invoke the jurisdiction of the United States Supreme Court pursuant to 28 U.S.C. § 1257. Respondents Theodore Chun, M.D. ("Respondent Dr. Chun"); The Queen's Medical Center ("Respondent QMC"); Virginia Frelander, R.N. ("Respondent Frelander"); and Sandra Proehl, R.N.

("Respondent Proehl"), (sometimes referred to collectively as "Respondents") assert this Honorable Court has no jurisdiction to review the orders of the Hawaii Supreme Court and the Intermediate Court of Appeals of the State of Hawaii ("Intermediate Court of Appeals") because Petitioner did not affirmatively or properly present, on the face of the record, a federal question constituting an appropriate ground for review. The alleged federal questions were neither timely raised nor specifically decided by the state courts, as set forth in Section V. below.

III. CONSTITUTIONAL AMENDMENTS, PROVISIONS AND RULES

Respondents deny that there are any Constitutional Amendments or statutory provisions involved in the issues presented in this Petition as explained in more detail in the argument set forth in Section V. below.

IV. COUNTERSTATEMENT OF THE CASE

Sup. Ct. R. 15 requires that Respondents point out any perceived misstatements in the Petition in their Brief in Opposition. Petitioner's Petition, however, consists of conclusory argument and his recitation of facts is, for the most part incomplete, based on the record that the Intermediate Court of Appeals and the Hawaii Supreme Court had before them at the time the former affirmed the trial court's Amended Judgment and the latter denied Petitioner's Petition for Writ of Certiorari. The following summary recitation sets forth the relevant procedural and factual background of the case based on the record below.

A. Factual Background

On June 18, 1992 Petitioner filed his Complaint and Demand for Jury Trial alleging a claim of medical malpractice against Respondents. (Record on Appeal, Volume 1, pp. 1-4 hereinafter "R1, 1-4"). The claim arose out of Petitioner's psychiatric hospitalization in the Kekela Ward of Respondent QMC (R1, 1-4). Petitioner has consistently maintained that, when hospitalized, he was not "deluded" (i.e. suffering from paranoid schizophrenia) (Plaintiff-Appellant's Opening Brief filed July 3, 1995 attached as Appendix 2 at A-15). Further, as Petitioner testified during an argument on September 10, 1993,

> . . . this medical malpractice suit, the origin go [sic] back to Dr. Chun diagnosing plaintiff as having delusions in regards to an incident in Sears Roebuck in which Sears' loss reduction unit considered him a shop lifting suspect and that from there the central intelligence agency got involved because it considers plaintiff a military genius in the way that plaintiff handled this matter by writing an anonymous letter to the Ala Moana Sears manager who at that time was Lawrence Higa and because the central intelligence agency does not have a public office here in Honolulu, Hawaii, the contact is the Federal Bureau of Investigation. And therefore it is discoverable material to show that, one, plaintiff was not having delusions when he spoke to Dr. Chun about Sears and the Central Intelligence Agency and FBI being involved in this. And, two, Dr. Chun was wrong in his diagnosis to say that plaintiff was suffering from delusions when in fact he was not.

(TR 9/10/93, p. 5, lines 15-25; p. 6, lines 1-18; and Appendix 2 at A-34 - A-38).

The proof that Petitioner has regularly cited in support of his contention that the conspiracy is real are two audiotapes of Petitioner and an unidentified third party which Petitioner describes as his "prima facie evidence" of the existence of a conspiracy. These audiotapes were played at the depositions of Respondents Frelander and Proehl, among others (R6 [sic], 3-40).[1]

In addition to the facts related to the discovery issues arising from Petitioner's medical malpractice claim, Petitioner also alleges that the Intermediate Court of Appeals and the Hawaii Supreme Court failed to consider and protect the Petitioner's federal civil rights under the United States Constitution and Title 42, Chapter 21 §§ 1983, 10801 and 10802 of the U.S. Code. Petitioner failed to identify any question related to these issues in the briefing to the court below. (Appendix 2; Plaintiff-Appellant's Reply Brief filed August 24, 1995; and Motion for Reconsideration filed December 1, 1997). The first time Petitioner raised these issues was in his Petition for Writ of Certiorari to the Hawaii Supreme Court filed January 8, 1998. Petitioner never provided the factual basis for these claims to the Intermediate Court of Appeals.

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[1] The May 25, 1995 Amended Record on Appeal mistakenly designates volume 5 as volume 6 resulting in two "Volume 6". Throughout the brief, citation will be made to Volume 6 [sic] for the records contained in the first Volume 6.

B. Procedural Background

1. Procedural Background Relating to Petitioner's Attempted Discovery From Sears

During discovery of this medical malpractice case, Petitioner attempted to learn more about the "conspiracy" against him. Petitioner relates the beginning of the conspiracy to an episode which allegedly occurred at the Ala Moana Sears store during which he was videotaped. He claims the resulting videotape was subsequently broadcast on local television stations. During discovery, Petitioner filed a subpoena duces tecum for the Custodian of Records of Sears, Roebuck & Co. (R1, 101-103). On May 17, 1993, Petitioner brought his first motion to compel Sears to answer Plaintiff's Subpoena. (R1, 188-214). As acknowledged by Respondents, Mr. Bernard Ching ("Mr. Ching"), who is the supervisor of the Ala Moana Security Department, attended the hearing and testified that Sears had no records about Petitioner. (R2, 90-132). On June 29, 1993, Petitioner actually took the oral deposition of Mr. Ching. Once again, Mr. Ching testified that Sears had no records about Petitioner. (R2, 90-132).

Not content with this information, on July 15, 1993, Petitioner filed a subpoena duces tecum commanding Stanley Nako, personnel officer, or an officer, director, managing agent, employee or other designated representative of Sears to appear for oral deposition on July 22, 1993. (R2, 90-132). The deposition did not occur. On July 28, 1993, Petitioner filed a Motion for an Order to Compel. (R2, 90-132). Respondent Dr. Chun filed a Statement of No Position to the Motion. (R2, 139-141). Respondents QMC, Proehl and Frelander did not file a response to the

Motion. A hearing on the motion took place on August 17, 1993. By order dated October 26, 1993, the Court denied Petitioner's Motion to Compel Sears. (R3, 371-372).

2. Procedural Background Relating to Petitioner's Request for Production of Documents to Respondent QMC

On August 6, 1993, Petitioner filed a Motion to Compel Respondent QMC to Comply with the First Request for Production of Documents. (R2, 152-198). Respondent QMC opposed this Motion on the bases that QMC had already produced or agreed to produce existing documents responsive to the request, and that the request in paragraph number 4 was vague and ambiguous and therefore, QMC could not fairly determine the nature of the request. (R3, 298-312). QMC further stated that "insofar as Plaintiff's request relates to records regarding Dr. Chun, no such records exist, since Dr. Chun was not an employee of QMC – a fact well known to Plaintiff." (R3, 298-312).

The court's September 9, 1993 order on the motion granted in part and denied in part Petitioner's request. (R3, 34-36). Not satisfied with the order, Petitioner filed a Motion for an Interlocutory Appeal of the court's ruling. (R4, 79-96). This motion was denied after briefing and a hearing on the Motion by order dated December 30, 1993. (R4, 214-215).

Petitioner had earlier filed a Motion For an Order to Arrest William A. Bordner and J. Gerard Lam for Contempt of Court for what he perceived to be their failure to

turn over the documents requested from QMC. (R3, 112-149). Respondent QMC opposed the Motion. (R3, 152-204). In its opposition, QMC argued that it had already produced documents as ordered by the court and further explained that other materials requested by Petitioner were not relevant or were protected from discovery by previous court order. (R3, 152-204). Petitioner's Motion to Arrest Bordner and Lam was denied on October 25, 1993. (R3, 366-367).

3. Procedural Background Relating to Petitioner's Repeated Failures to Comply With the Court's Orders Permitting Discovery of Audiotapes Used By Petitioner During Depositions and Referred to in His Expert's Opinion.

In an attempt to explore issues related to Petitioner's psychiatric diagnosis, decisional capacity, damages relating to the alleged nonconsensual treatment by Respondents and the intertwined issue of the alleged Central Intelligence Agency and Federal Bureau of Investigation conspiracy, Respondents QMC, Proehl and Frelander served Petitioner with a First Request for Answers to Interrogatories on December 20, 1993. (R4, 157-161). Petitioner did not submit answers or objections to this request. Instead, on January 21, 1994, Petitioner wrote indicating he would not answer the interrogatories unless he decided to "have the tapes admitted as evidence". (R6 [sic], 3-40).

By letter dated January 26, 1994, counsel for Respondents QMC, Proehl and Frelander advised Petitioner that he was required under Rule 33, Hawaii Rules of Civil

Procedure, to file a response to the interrogatories and gave Petitioner an unsolicited extension of time within which to respond. (R6 [sic], 3-40 at Exhibit "F"). Rather than responding as required by the rules, Petitioner sent a faxed correspondence to defense counsel at approximately 10:00 p.m. on January 31, 1994. In that fax, he reiterated his position that he had not decided whether to use the tapes at trial and would not answer the interrogatories based upon "Pro Se – Client Privilege." (R6 [sic], 3-40 at Exhibit "G").

Given Petitioner's refusal to answer the interrogatories, Respondents QMC, Proehl and Frelander filed a Motion to Compel Answers to Interrogatories. (R6 [sic], 3-40). Petitioner opposed the motion by written brief and argument at the hearing before the Honorable Kevin S.C. Chang ("Judge Chang") on March 4, 1994. On March 22, 1994, the court issued its order requiring Petitioner to supply complete and detailed answers to each interrogatory propounded to the Petitioner. (R6 [sic], 381-383).

Petitioner did not answer the interrogatories as ordered by the court. Consequently, on May 4, 1994 Respondents QMC, Proehl and Frelander filed another Motion to Compel Answers to Interrogatories and Compliance with Court Order (hereinafter "Second Motion to Compel"). (R6, 207-214). By letter of May 7, 1994 to William A. Bordner from Petitioner, Petitioner again refused to comply with Judge Chang's order based on his view that the audiotapes in question would not be admissible at trial, that the order compelling production of information about the tapes was illegal and that it would be criminal for the courts to order him to provide the information requested. (R6, 223-236 at Exhibit "A").

In the same letter, Petitioner threatened counsel with the filing of a complaint with the Office of Disciplinary Counsel and threatened the involved judges with a complaint to the Commission on Judicial Conduct. He also threatened to file a criminal complaint with the Office of the Prosecuting Attorney. (R6, 223-236 at Exhibit "A").

After Petitioner's submission of an opposition memorandum, a hearing on the Second Motion to Compel was held on May 20, 1994. At the hearing, the court indicated that it would grant the Second Motion to Compel and requested that additional information be presented regarding the appropriate sanction. A supplemental memorandum was submitted on this issue by Respondents QMC, Proehl and Frelander on May 25, 1994. (R7, 1-16).

By order filed June 27, 1994, the Court granted Respondents QMC, Proehl and Frelander's Second Motion to Compel and ordered Petitioner to pay $500.00 in sanctions. The Court further ordered that:

> Mr. Nakamura shall be and is hereby precluded from presenting at trial any evidence of the subject audiotapes and/or transcripts of the subject audiotapes. . . . [The] request for a dismissal of the complaint, in light of Mr. Nakamura's failure to comply with Judge Chang's discovery order, is denied without prejudice.

(R7, 42-44).

After the Court's order, Petitioner continued to use the tapes and transcripts of the tapes (which were the subject of the Court's March 22, 1994 and June 27, 1994

Orders) as part of his discovery strategy. Specifically, on July 7, 1994, after the Court had issued its sanction order, Petitioner noticed and took the deposition of Lynn Nakamoto ("Ms. Nakamoto"). During the deposition, Petitioner played the tapes and questioned Ms. Nakamoto about them despite opposing counsel's objection to this line of questions in light of the Court's ruling. (R7, 324-387 at Exhibit "C").

Petitioner also provided the tapes to his expert witness, Dr. Richard Rappaport ("Dr. Rappaport") of Rancho Santa Fe, California. (TR 10/19/94, p. 26, lines 24-25; p. 27, lines 1-25; and p. 28, lines 1-12). In a report by Dr. Rappaport submitted to the court by Petitioner as an attachment to his Pretrial Statement, it is clear that Dr. Rappaport, in arriving at his assessment of Petitioner, relied, at least in part, on the tapes and transcriptions which were the subject of the interrogatories served by Respondent QMC on Petitioner. (R7, 30-35). Given Petitioner's continuing disobedience of two court orders compelling him to answer interrogatories regarding the audiotapes and his continued use of the audiotapes in the development of his case, Respondents QMC, Proehl and Frelander moved for dismissal of Petitioner's claim on September 14, 1994. (R7, 324-387). In the Motion to Dismiss, Respondents QMC, Proehl and Frelander argued that Petitioner's intentional defiance of the court orders demonstrated contemptuous and contumacious conduct justifying the extreme sanction of dismissal.

Respondent Dr. Chun joined in the Motion to Dismiss on September 21, 1994. (R7, 406-412). After the submission of an opposition memorandum and hearing on the motion, the Court ruled that Respondents' Motion to

Dismiss would be granted unless within 14 days of hearing, Petitioner provided Respondents with the audiotapes and his answers to interrogatories propounded regarding the audiotapes. (R8, 410-412). By affidavit submitted to the Court on November 17 and 21, 1994, respectively, counsel for Respondents QMC, Proehl, and Frelander and counsel for Respondent Dr. Chun informed the court, as requested, of Petitioner's continued noncompliance with the Court's orders and requested that the Complaint be dismissed with prejudice. (R8, 437-449 and 450-464).

The Order of Dismissal with Prejudice was filed November 22, 1994. (R8, 473-474). Notice of Entry of Order was filed on the same day. (R8, 477-478). The Judgment and Notice of Entry of Judgment were filed January 20, 1995. (R9, 34-36). An Amended Judgment was filed March 29, 1995. (R9, 166-168). Petitioner's appeal was from that Amended Judgment.

The Intermediate Court of Appeals filed its Summary Disposition Order on November 20, 1997, affirming the Circuit Court's Amended Judgment. The Hawaii Supreme Court denied Petitioner's Petition for Writ of Certiorari on January 16, 1998.

V. ARGUMENT.

A. This Honorable Court Lacks Jurisdiction to Grant Petitioner's Petition Under 28 U.S.C. § 1257.

1. A Federal Question was Neither Timely and Expressly Raised by Petitioner Nor was it Passed Upon by the State Courts

It has long been settled that this Court has no jurisdiction to review the judgment of a state court of last resort on a writ of error, unless it affirmatively appears on the face of the record that a federal question constituting an appropriate ground for such review was presented in and expressly or necessarily decided by the state court. *Mellon v. O'Neil*, 275 U.S. 212, 214-215 (1927). The Court indicated "it is not enough that there may be somewhere hidden in the record a question which if it had been raised would have been of a federal nature." *Mellon v. O'Neil*, 275 U.S. at 214; *Dewey v. Des Moines*, 173 U.S. 193, 199 (1899); *Keoluk & Hamilton Bridge Co. v. Illinois*, 175 U.S. 626, 634 (1900).

The United States Supreme Court indicated in *Cardinale v. Louisiana*, 394 U.S. 437, 439 (1969), that it was very early established that the Court will not decide federal constitutional issues raised for the first time on review of a state court decision. This principle was established with *Owings v. Norwood's Lessee*, 5 Cranch 344 (1809) and the Judiciary Act of 1789, c. 20, § 25, 1 Stat. 85, vested the court with no jurisdiction unless a federal question was raised and decided in the state court below. 10 Pet. 368, 391. *See, Bankers Life and Casualty Company v. Crenshaw*, 486 U.S. 71, 78-80 (1988); *Webb v. Webb*, 451 U.S. 493, 495

(1981); *Mutual Life Insurance Company of New York v. McGrew*, 188 U.S. 291, 308 (1903).

While Petitioner herein now alleges violations of rights guaranteed to him under 42 U.S.C. §§ 1983, 10801, 10802, and the First, Seventh and Fourteenth Amendments of the United States Constitution, these issues were never specifically presented to or determined by the Intermediate Court of Appeals or the Hawaii Supreme Court.

By his own admission, Petitioner initially referenced violation of federal rights in his Reply Brief filed August 24, 1995 in the Intermediate Court of Appeals. Petitioner's claims were vague at best. He neither raised nor presented these alleged federal questions for determination by the Intermediate Court of Appeals in his Opening Brief filed July 3, 1995. More specific allegations of violation of rights protected by the United States Constitution were made in Petitioner's Petition for Writ of Certiorari filed in the Hawaii Supreme Court on January 8, 1998. The Hawaii Supreme Court summarily denied Petitioner's Petition for Writ of Certiorari on January 16, 1998. The long established general rule is that an attempt to raise a federal question after judgment, upon a petition for rehearing, is too late, unless the court actually entertains the question and decides it. *Herndon v. Georgia*, 295 U.S. 441, 443 (1935). The United States Supreme Court has held that a federal question first raised in a petition for rehearing in a highest state court is raised too late to confer jurisdiction where the petition was denied without rehearing. *Mutual Life Insurance Company of New York v. McGrew*, 188 U.S. at 308.

When a highest state court is silent on a federal question, it is assumed that the issue was not properly presented. *Adams v. Robertson*, 520 U.S. 83, ___, 117 S.Ct. 1028, 1029 (1997); *Board of Directors of Rotary International v. Rotary Club of Duarte*, 481 U.S. 537, 550 (1987). The aggrieved party then bears the burden of defeating this assumption, by demonstrating that the state court had "a fair opportunity to address the federal question that is sought to be presented here." *Adams v. Robertson*, 520 U.S. at ___, 117 S.Ct. at 1029; *Webb v. Webb*, 451 U.S. at 401.

Critical to the court's determination of whether or not to exercise jurisdiction over questions not properly raised below are the policy and practical considerations including comity to the state and the court's need for a properly developed record on appeal. It is important that state courts be given the first opportunity to consider the applicability of state statutes in constitutional challenges since the statutes may be construed to preserve their constitutionality or the issue may be resolved by an adequate state ground. Raising the federal issue first in state court affords the parties the opportunity to develop the record necessary for adjudicating the issue. The record will likely be inadequate where federal questions are not raised below. *Cardinale v. Louisiana*, 394 U.S. at 439; *Bankers Life and Casualty Company v. Crenshaw*, 486 U.S. at 79; *Webb v. Webb*, 451 U.S. at 500-501.

It is also well established that federal question jurisdiction is present "only when the plaintiff's statement of his own cause of action shows that it is based upon federal laws or the federal constitution." *Kerr-McGee Chemical Corporation v. Illinois*, 459 U.S. 1049 (1982), citing *Louisville & N.R. Company v. Mottley*, 211 U.S. 149 (1908).

Petitioner herein has asserted his cause of action is one for medical malpractice. Petitioner's Complaint presents only a state law claim and does not create federal question jurisdiction. Petitioner's Complaint in the Circuit Court of the First Circuit, State of Hawaii, was dismissed with prejudice on November 22, 1994 for Petitioner's failure to comply with the state court's discovery orders. Petitioner's claims have no federal basis.

Petitioner did not raise any federal question before the Circuit Court of the First Circuit, the Intermediate Court of Appeals or the Hawaii Supreme Court in any manner to afford them a fair opportunity to consider or address the alleged federal questions that are sought to be presented here. Careful review of the record shows it is devoid of a timely assertion of any alleged federal question and that the Circuit Court of the First Circuit, the Intermediate Court of Appeals or the Hawaii Supreme Court neither entertained the alleged federal questions nor decided them.

VI. CONCLUSION.

This state case, addressing a state issue, interpreting the Hawaii Rules of Civil Procedure, was properly and duly adjudicated before the Circuit Court of the First Circuit, the Intermediate Court of Appeals and the Hawaii Supreme Court. Petitioner failed to raise and timely assert any federal constitutional issues and the record establishes no federal questions were passed upon by the state courts. Petitioner's feeble attempt to raise any alleged federal question in the Petition for Writ of Certiorari to the Hawaii Supreme Court falls woefully

short of a well established principle that the federal question must first be raised and passed upon by the state court before the United States Supreme Court may review the matter.

Respondents respectfully request this Honorable Court deny Petitioner's Petition for Writ of Certiorari for lack of jurisdiction.

Respectfully submitted this 20th day of May, 1998.

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APPENDIX

APPENDIX 1

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THEODORE CHUN, M.D.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

BRUCE RYAN NAKAMURA Plaintiff, vs. THEODORE CHUN, M.D. QUEEN'S MEDICAL CENTER, VIRGINIA FRELANDER, R.N., SANDRA PROEHL, R.N., Defendants.	CIVIL NO. 92-2171-06 Medical Malpractice AMENDED JUDGMENT Trial: None

AMENDED JUDGMENT

(Filed Mar. 29, 1995)

Pursuant to Rule 58 and the Order of Dismissal with Prejudice filed on November 22, 1994, Judgment on the

Complaint is hereby entered in favor of Defendants Queen's Medical Center; Virginia Frelander, R.N.; Sandra Proehl, R.N.; and Theodore Chun, M.D. and against Plaintiff Bruce Ryan Nakamura.

Pursuant to the Clerk's Taxation of Costs filed on December 7, 1994, Judgment for costs is hereby entered in favor of Defendants Queen's Medical Center; Virginia Frelander, R.N.; and Sandra Proehl, R.N. and against Plaintiff Bruce Ryan Nakamura in the amount of $5,279.92.

Pursuant to the Honorable Wendell K. Huddy's ruling at the hearing on Defendant Theodore Chun, M.D.'s Motion to Amend Judgment Filed January 20, 1995 to Include Additional Costs filed herein on January 26, 1995, Judgment for costs is hereby entered in favor of Defendant Theodore Chun, M.D. and against Plaintiff Bruce Ryan Nakamura in the amount of $5,703.22.

There are no other claims remaining.

DATED: Honolulu, Hawaii, 3-24-95

/s/ Wendell K. Huddy
Judge of the Above-Entitled Court

APPROVED AS TO FORM:
Plaintiff Pro Se Declines
to sign
BRUCE RYAN NAKUMURA
Plaintiff, Pro Se

/s/ William A. Bordner
WILLIAM A. BORDNER
DAVID A. GRUEBNER
Attorneys for Defendants
QUEEN'S MEDICAL CENTER;
VIRGINIA FRELANDER, R.N.;
and SANDRA PROEHL, R.N.

APPENDIX 2

NO. 18890

IN THE SUPREME COURT OF THE STATE OF HAWAII

BRUCE RYAN NAKAMURA Plaintiff Pro Se-Appellant vs. THEODORE CHUN, MD QUEEN'S MEDICAL CENTER VIRGINIA FRELANDER, RN SANDRA PROEHL, RN Defendants-Appellees	APPEAL FROM THE ORDER FILED NOVEMBER 22, 1994 DISMISSING CIVIL NO. 92-2171-06 HONORABLE THOMAS K. KAULUKUKUI, JR. HONORABLE MELVIN K. SOONG HONORABLE VIRGINIA L. CRANDALL HONORABLE KEVIN S.C. CHANG HONORABLE COLLEEN HIRAI HONORABLE RUSSELL NAGATA HONORABLE HERBERT K. SHIMABUKURO HONORABLE WILFRED K. WATANABE HONORABLE WENDELL K. HUDDY

PLAINTIFF-APPELLANT'S OPENING BRIEF

CERTIFICATE OF SERVICE

(Filed Jul. 3, 1995)

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Plaintiff-Appellant Pro Se

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NO. 18890

IN THE SUPREME COURT OF THE STATE OF HAWAII

BRUCE RYAN NAKAMURA Plaintiff Pro Se-Appellant vs. THEODORE CHUN, MD QUEEN'S MEDICAL CENTER VIRGINIA FRELANDER, RN SANDRA PROEHL, RN Defendants-Appellees	APPEAL FROM THE ORDER FILED NOVEMBER 22, 1994 DISMISSING CIVIL NO. 92-2171-06 HONORABLE THOMAS K. KAULUKUKUI, JR. HONORABLE MELVIN K. SOONG HONORABLE VIRGINIA L. CRANDALL HONORABLE KEVIN S.C. CHANG HONORABLE COLLEEN HIRAI HONORABLE RUSSELL NAGATA HONORABLE HERBERT K. SHIMABUKURO HONORABLE WILFRED K. WATANABE HONORABLE WENDELL K. HUDDY

PLAINTIFF-APPELLANT'S OPENING BRIEF
STATEMENT OF THE MAJOR ASPECTS OF THE CASE

Plaintiff-Appellant filed suit on June 18, 1992 for personal injury sustained as a result of the alleged medical negligence of Defendants-Appellees Theodore Chun, MD, Virginia Frelander, RN, and Sandra Proehl, RN. (Record on Appeal Vol. 1 pp. 1-4) The allegation is that

the defendants force treated and force medicated plaintiff-appellant, also referred to as appellant, without his informed consent, and that the appellant subsequently became disabled as a result of adverse effects from the medicine forced upon him by Theodore Chun, MD's threat of court order. Hawaii Revised Statutes Section 671-1 (2) defines a medical tort as:

> *Professional negligence, the rendering of professional service without informed consent, or an error or omission in professional practice, by a health care provider, which proximately causes death, injury or other damage to a patient.*

This statute means that health care providers practicing in Hawaii are liable in tort for damages for rendering professional services which proximately causes injury or other damage to a patient without first obtaining that patient's informed consent.

Hawaii Revised Statutes 671-3 reads,

(a) The board of medical examiners, insofar as practicable, shall establish standards for health care providers to follow in giving information to a patient, or to a patient's guardian if the patient is not competent to give an informed consent, to insure that the patient's consent to treatment is an informed consent. The standards may include the substantive content of the information to be given, the manner in which the information is to be given by the health care provider and the manner in which consent is to be given by the patient or the patient's guardian.

(b) If the standards established by the board of medical examiners include provisions which are designed to reasonably inform a patient, or a patient's guardian, of:

(1) The condition being treated;

(2) The nature and character of the proposed treatment or surgical procedure;

(3) The anticipated results;

(4) The recognized possible alternative forms of treatment; and

(5) The recognized serious possible risks, complications, and anticipated benefits involved in the treatment or surgical procedure, and in the recognized possible alternative forms of treatment, including nontreatment,

then the standards shall be admissible as evidence of the standard of care required of the health care providers.

Appellant alleges that none of the above standards were satisfactorily met by the defendants. Dr. Chun diagnosed appellant as deluded, but appellant doesn't recall that Dr. Chun tried verbal psychotherapy to attempt to convince appellant that he was deluded.

On the night of May 8, 1989 appellant was taken by the police to The Queen's Medical Center for psychiatric observation by way of ex parte order. (RA Vol. 4 p. 93) At The Queen's Medical Center, appellant alleges that Honolulu Police Officer Gary Goeas told appellant that the handcuffs wouldn't be taken off unless appellant agreed to sign papers for so-called voluntary admission. Officer Goeas was subpoenaed to do an oral deposition on November 26, 1994, but failed to attend his deposition and testify as to what he remembered telling appellant about the condition of removal of the handcuffs. (RA Vol. 8 pp. 398-401) Officer Goeas did not file a Motion to Squash Subpoena nor attempt to get a protective order.

On the morning of May 9, 1989 appellant alleges that Defendant-Appellee Theodore Chun, MD, also referred to as Dr. Chun, in the secrecy of appellant's room, loudly threatened appellant as follows, "WE CAN DO THIS THE EASY WAY! YOU CAN VOLUNTEER FOR THE TREATMENT OR I'M GOING TO TAKE YOU TO COURT AND MAKE YOU!!!" Appellant was flabbergasted, but could see right away that Dr. Chun didn't graduate medical school in April 1989. It was obvious to appellant that Dr. Chun had been practicing medicine for a number of years and had experience in taking patients to court. At his deposition on January 27, 1994 Dr. Chun stated that he did have experience taking patients to court and winning orders to hold them against their will. Dr. Chun testified calmly, "I told you at the beginning when I saw you that you could sign into the hospital voluntarily, and that if you did not, that we could go to court and let the judge decide whether you needed to be in the hospital or not." (RA Vol. 5, p. 317, lines 14-18) Appellant claims that Dr. Chun did not use a calm pleasant demeanor when he loudly threatened to take appellant to court. Appellant maintains that his medical records, his testimony, and the testimony of his medical expert, will show the jury that all treatment and medication at The Queen's Medical Center was forced upon him. No one at the hospital told appellant that he could be released within 48 hours. Appellant was told over the phone by someone at the Protection and Advocacy Agency, that if Dr. Chun filed for a court order, appellant would have to remain locked up at the Kekela Ward of The Queen's Medical Center while awaiting the hearing, that the waiting period was usually two weeks, and there was no guarantee that

appellant would win and be released. Having been brought in by ex parte order, appellant was 100% sure that Dr. Chun was going to get his way from the court. The appellant also knew that he was being billed for every additional day he was locked up at Kekela. Appellant concluded that Dr. Chun was going to have his way and keep appellant at the hospital subject to Dr. Chun's idea of treatment. These circumstances are not voluntary compliance and appellant had no idea that what he alleges was analogous to a Stalin style force medication program was going to be used on him, ultimately to his disablement.

Dr. Chun started medication on May 9, 1989. Excerpts from this page reads, *"The patient lacked insight and initially refused medication."* Here Dr. Chun states in his own words that appellant is deluded and won't take medication. *"He grudgingly took his medication after some persuasion."* The "persuasion" mentioned here is the alleged threat Dr. Chun made to take appellant to court if the appellant didn't so-called volunteer for the treatment. *"Because of his lack of insight and resistance to taking medication, it was decided to start the patient on Haldol Decanuate in addition to his oral Haldol, which consisted of Haldol, 5 mg, t.i.d. He was given a Haldol Decanuate shot on 05/11/89."* Further down the page Dr. Chun writes, *"Although he was resistive . . . "*, and *" . . . on a daily basis the patient would ask for discharge . . . "* (RA Vol. 2 p. 235)

Despite asking for discharge, The Queen's Medical Center did not release appellant nor bring paperwork to him to initiate the discharge process. More down page 235 Dr. Chun states, *"He also continued to ask that his medication be cut in half and even went to the point of refusing*

to take a whole tablet of the Haldol and Cogentin and had the nurse give him half a tablet before he would take it. Because of this, it was decided to give him another cubic centimeter of Haldol Decanuate on 05/18/89 . . . " (RA Vol. 2 p. 235)

Appellant hired Richard G. Rappaport, MD, a forensic psychiatrist from San Diego. Dr. Rappaport wrote a report dated March 8, 1994 in which he concluded that appellant was force medicated and was injured as a result. Dr. Rappaport wrote, *"The hospital experience exacerbated that depression by denying the patient his sense of control over his life as well as causing the production of both physical and emotional symptoms.*

In regard to the patient's being given the medication, Haldol, without his permission and despite the fact that he refused the medication, the following remarks must be made: The law in Hawaii states that a patient has the right to refuse treatment even if he is a voluntary patient in a hospital. Bruce Nakamura felt that he was forced to accept hospitalization and medication that he did not want even though it may have been appropriate for him. But, since he had the right to refuse, he should have been treated with respect for those rights and not threatened or treated with force unless he was considered dangerous. If the patient was dangerous, then forced admission and forced treatment are appropriate in the form of restraints and IM [intramuscular] medication, but only on an emergency basis. If the patient continues to refuse treatment, the patient should be examined to determine his competency to exercise his right of refusal, or should be entered into the legal process of obtaining a waiver of that right so that the doctor can then treat the patient. If the doctor does not want to proceed through these alternatives, he should discharge the patient, AMA (against medical advice). However, whatever method he chooses

to deal with the reluctant patient, he must record all the events with an explanation as to his thinking in making the various choices. All of this is especially important and essential in dealing with a delusional disordered patient even if the medication is appropriate, because such patients are by the nature of their illness, suspicious and do not see themselves as ill.

The correct procedure was not observed by the medical staff in that the proper forms were not filled out, notations not properly made in the records and the thinking of the staff was not documented as to why the patient was given the medication without his non-threatened agreement. There are, in fact, some statements in the medical records, including the discharge summary, which indicate that the patient refused medication. However, the only compliance by the staff with that refusal was to give the patient, at one point, a half a dosage. Otherwise there is no indication as to why the staff went ahead and gave the patient oral medication, as well as IM medication on two occasions." (RA Vol. 7 pp. 45-46)

None of the defendants-appellees hired an expert to refute Dr. Rappaport's opinion, which established a prima facie case for appellant, nor was Dr. Rappaport's deposition taken. No depositions have been taken on behalf of the defendants at all.

On August 17, 1993 Plaintiff Bruce Ryan Nakamura's Motion For An Order To Compel Stanley Nako or Designated Officer of Sears, Roebuck, and Company To Do An Oral Deposition And Bring Subpoenaed Documents To The Deposition filed July 28, 1993 was heard in Judge Wilfred K. Watanabe's courtroom. (RA Vol. 2, pp. 90-135) Neither Stanley Nako nor Sears filed any memorandum in opposition to this motion, nor was any lawyer retained

by Sears to argue against appellant's motion, nor did Stanley Nako nor anybody else show up in court on behalf of Sears. Unbelievably, Judge Watanabe ignored this contemptuous behavior and denied appellant's motion. Appellant maintains that he should have won by default.

On August 25, 1993 Plaintiff Bruce Ryan Nakamura's Motion For An Order To Compel The Queen's Medical Center To Comply With Plaintiff's First Request For Production Of Documents, filed August 6, 1993 was heard in Judge Wilfred K. Watanabe's Courtroom. (RA Vol. 2, pp. 152-198) Appellant was convinced that documents were being withheld by The Queen's Medical Center, in defiance of appellant's Notice of Production of Records. Judge Watanabe granted the motion. However, after perusing through the documents turned over by The Queen's Medical Center, appellant remained of the opinion that disclosure documents indicating that a lawsuit was filed against Theodore Chun, MD, The Queen's Medical Center, Virginia Frelander, RN, and Sandra Proehl, RN, were still missing.

Thus on October 15, 1993 a discovery conference was held in Judge Melvin K. Soong's Chambers, (RA Vol. 2, pp. 204-288) and the conference turned out to be a waste of time, as will be explained later in the argument section.

In the course of taking depositions of third parties and of the defendants, appellant introduced as prima facie evidence, a couple of audiotapes to show that he was not deluded. One audiotape talked about a Central Intelligence Agency (CIA) brainwash manipulation scheme, the other audiotape mentioned the broadcast

over Oahu television channels of a Sears security videotape of the appellant. In early 1984 appellant, who is self-conscious due to a severe hearing loss and thick glasses, lost control and couldn't stand still while in the Ala Moana Sears store. Appellant alleges that the Ala Moana Sears store took a security videotape of him, reproduced a still picture and covertly distributed that picture all around town through security channels with the documentation that appellant was to be considered a shoplift suspect even through Sears never saw appellant even attempt to steal anything. The result of the alleged Sears documentation was that security personnel tried to drive appellant out of the University of Hawaii Hamilton library because appellant was considered persona non grata based upon the information circulated by the Ala Moana Sears store. (RA Vol. 5, p. 98)

On December 21, 1993 William A. Bordner on behalf of The Queen's Medical Center, Virginia Frelander, RN and Sandra Proehl, RN, served appellant with interrogatories about the audiotapes. (RA Vol. 4, pp. 157-161) On March 1, 1994 appellant answered that the audiotapes which were introduced as prima facie evidence wouldn't be used at trial so the interrogatories were moot, (Appellant defines moot as meaning an issue in question that doesn't affect the outcome of the related litigation even if no action is taken on that issue in question.) irrelevant, and appellant claimed Pro Se-Client privilege, the analogous equivalent of attorney-client privilege. (RA Vol. 5, pp. 176-193) Defendants didn't agree and on February 3, 1994 filed a motion to compel hearing which was held on March 4, 1994 before Judge Kevin S. C. Chang. (RA Vol. 6,

pp. 3-40) The defendants did not show defensive probative value or how the lack of information prejudiced their ability to defend their clients, yet Judge Change ruled in Defendants favor. However, to protect his prima facie witnesses, appellant declined to identify the voices on the audiotapes on the basis that if a covert societal government scheme is in effect, anybody providing information contrary to such a covert societal government plot would be at risk and protecting them is not being selfish, even if appellant were deluded.

On March 11, 1994 Judge Kevin S. C. Chang heard Plaintiff Bruce Ryan Nakamura's Motion To Compel Bernard Ching, Loss Prevention Manager Of The Ala Moana Sears, Roebuck, and Company Store To Do An Oral Deposition And Bring Subpoenaed Documents To The Deposition, filed February 10, 1994. (RA Vol. 6, pp. 90-123) Judge Chang decided that the audiotapes which were the subject of the March 4, 1994 hearing in his courtroom, which he ruled had enough substance to order appellant to answer audiotape interrogatories, contradictorily had insufficient substance to order Bernard Ching of the Ala Moana Sears to come to a deposition and bring subpoenaed documents with him.

On April 13, 1994 Judge Wendell K. Huddy heard Plaintiff's Bruce Ryan Nakamura's Motion For An Order To Overrule Defendant Sandra Proehl, RN's Objections To Plaintiff's Second Request For Answers To Interrogatories Dated December 1, 1993. (RA Vol. 6, pp. 309-374) Backing up six weeks, on February 25, 1994, Judge Virginia L. Crandall overruled some of Defendant Virginia Frelander, RN's identical objections to identical interrogatories. (RA Vol. 6, pp. 43-80) Defendant Nurse Proehl did not argue a

legal change in environment between February 25 and April 13, yet Judge Huddy refused to overrule a single one of Nurse Proehl's identical objections to identical interrogatories. The result was that Judge Huddy developed a credibility problem.

On May 20, 1994 a second hearing over the audiotape interrogatories was heard by Judge Melvin K. Soong: Defendants The Queen's Medical Center, Virginia Frelander, RN and Sandra Proehl, RN's Motion To Compel Plaintiff's Answers To Interrogatories and Compliance With Court Order, filed May 4, 1994. (RA Vol. 6, pp. 207-214) Defendants The Queen's Medical Center, Virginia Frelander, RN, and Sandra Proehl, RN, argued that appellant might rely on the audiotapes at trial. Despite failure of The Queen's Medical Center, Virginia Frelander, RN, and Sandra Proehl, RN, to show how the audiotape interrogatories were reasonably calculated to lead to anything discoverable of defensive probative value, Judge Soong granted their motion and then contradicted himself by simultaneously ruling that the audiotape information is inadmissible! Judge Soong's order filed June 27, 1994 read, *"Plaintiff shall be and is hereby precluded from presenting at trial any evidence of the subject audiotapes and/or transcripts."*. (RA Vol. 7, pp. 42-44) Judge Soong further compounded the irrationality of his decision by ordering appellant to pay The Queen's Medical Center $500.00 for not answering the interrogatories earlier, instead of ruling that sanctions for not providing inadmissible evidence a dead issue. Appellant timely paid the $500.00 sanction and declined to identify the voices on the audiotapes to protect them which is not a selfish reason even if appellant were deluded.

Subsequently, defendants filed on September 14, 1994 their third motion about the audiotapes, a motion to dismiss the complaint for want of the inadmissible audiotape information: Defendants The Queen's Medical Center, Virginia Frelander, RN, and Sandra Proehl, RN's Motion To Dismiss Complaint, which was eventually heard by Judge Wendell K. Huddy on October 19, 1994 instead of October 4 due to the tsunami warning. (RA Vol. 7, pp. 324-387) Judge Huddy ordered appellant to answer interrogatories that not only were inadmissible, but were also not reasonably calculated to lead to anything discoverable with defensive probative value. The answers were to be provided within 14 days of the filing of Judge Huddy's discovery order which was filed on November 3, 1994. (RA Vol. 7, pp. 410-412) So the answers were to be provided not later than November 17, 1994.

Also on October 19, 1994 Judge Huddy heard Plaintiff Bruce Ryan Nakamura's Motion For Reconsideration Of Order Denying Plaintiff's Motion For An Order To Overrule Defendant Theodore Chun, MD's Objections to Plaintiff's First Request For Answers To Interrogatories Dated September 18, 1993 Filed August 1, 1994. (RA Vol. 7, pp. 53-118) This reconsideration motion was a direct result of the credibility problem Judge Huddy developed for himself on April 13, 1994 when he refused to overrule any of Sandra Proehl, RN's objections to interrogatories, despite the fact that Judge Virginia L. Crandall overruled some of Defendant Virginia Frelander, RN's identical objections to identical interrogatories on February 25, 1994. During the October 19, 1994 hearing of the reconsideration motion, Dr. Chun's attorney, Anne S.

Kwiatkowski asked for a sanction on the basis that the reconsideration motion was frivolous. Judge Huddy agreed and sanctioned appellant $135.00 which was timely paid.

On October 31, 1994 appellant filed a Writ of Mandamus No. 18507 with the Hawaii Supreme Court to instruct Judge Wendell K. Huddy not to issue excessive discovery orders or to dismiss the case. The Hawaii Supreme Court's opinion was filed on November 4, 1994 and stated, *"Upon consideration of Petitioner Bruce Ryan Nakamura's petition for writ of mandamus directed to Judge Wendell K. Huddy and the papers and exhibits in support, it appears Petitioner will have an eventual remedy by way of appeal if an adverse judgment is entered in the underlying action. Therefore, IT IS HEREBY ORDERED that the petition is denied."*

On November 5, 1994 appellant mailed his response to Judge Huddy's discovery order to the defendants objecting on the grounds that evidence which is inadmissible at trial is moot, that the audiotapes would NOT be used at further depositions, and claimed ministerial privilege. (Certificate of Service filed November 3, 1994 RA Vol. 8, pp. 408-409)

On November 17, 1994 defense attorney Anne S. Kwiatkowski on behalf of Theodore Chun, MD, filed an affidavit asking Judge Huddy to dismiss appellant's complaint with prejudice if Judge Huddy decided that appellant's response did not comply with his order. (RA Vol. 8, pp. 437-449) Judge Huddy granted Dr. Chun's affidavit request and on November 22, 1994 an Order of Dismissal With Prejudice was filed. (RA Vol. 8, pp. 473-474)

On January 20, 1995 a Notice of Entry of Judgment was filed. (RA Vol. 9, p. 36) However on January 26, 1995, Defendant Theodore Chun, MD's Motion To Amend Judgment Filed January 20, 1995, was filed which tolled the time for appellant to appeal. (RA Vol. 9, p. 43-55)

On February 9, 1995 Judge Wendell K. Huddy heard Defendant Theodore Chun, MD's Motion To Amend Judgment Filed January 20, 1995. Appellant didn't learn about the hearing until he received Dr. Chun's proposed order on February 11, 1995 because the papers to notify appellant about the hearing were never delivered. The volumes of documents created by appellant in the pursuit of his claim is evidence of his diligent prosecution. However, Judge Huddy ruled in the absence of the appellant and in favor of Dr. Chun, instead of giving appellant a courtesy continuance.

On March 30, 1995 a Notice of Entry of Judgment regarding the Amended Judgment was filed, opening the way for the Hawaii Supreme Court to hear this appeal. (RA Vol. 9, pp. 167-168)

STATEMENT OF THE POINTS OF ERROR

1. On August 17, 1993 Judge Wilfred K. Watanabe heard Plaintiff Bruce Ryan Nakamura's Motion For An Order To Compel Stanley Nako Or Designated Officer Of Sears, Roebuck, And Company To Do An Oral Deposition And Bring Subpoenaed Documents To The Deposition, filed July 28, 1993. (RA Vol. 2, pp. 90-132) Judge Watanabe denied plaintiff's motion and this was an error because Sears didn't even bother to show up for the hearing, did not submit a memorandum in opposition in accordance

with the Hawaii Rules of Civil Procedure, nor retain a lawyer to represent it. Judge Watanabe should have ordered Stanley Nako to come to the deposition and bring subpoenaed documents to the deposition by default. Judge Watanabe let Sears and Stanley Nako get away with blatant contempt of court. Judge Watanabe denied plaintiff access to significant discovery considering plaintiff's allegations that Sears took a security videotape of plaintiff and libeled him.

2. On August 25, 1993 Judge Wilfred K. Watanabe heard Plaintiff Bruce Ryan Nakamura's Motion For An Order To Compel The Queen's Medical Center To Comply With Plaintiff's First Request For Production Of Documents, filed August 6, 1993. (RA Vol. 2, pp. 152-198) The lawyer for The Queen's Medical Center, J. Gerard Lam, wrote in his opposition memorandum, *"Insofar as Plaintiff's request relates to records regarding Dr. Chun, no such records exist since Dr. Chun was not an employee of QMC – a fact well-known to Plaintiff."* (RA Vol. 2, p. 301) Why would plaintiff-appellant ask for employment records that he already knows do not exist? Therefore plaintiff-appellant had to be asking for all non-employment material such as credentials material used to evaluate Dr. Chun for hospital privileges. Judge Watanabe ignored this subterfuge, and denied plaintiff-appellant the right to get standard interrogatory information such as the addresses, dates of birth, Social Security numbers, and telephone numbers of Defendants Theodore Chun, MD, Virginia Frelander, RN, and Sandra Proehl, RN, which torpedoed plaintiff-appellant's ability to do a thorough discovery background check such as whether any of the defendants had convictions of any sort, despite the fact that plaintiff-appellant's

medical records clearly show that plaintiff-appellant was never was [sic] a threat to any of the defendants. Instead, plaintiff-appellant complains that the defendants force medicated him by Dr. Chun's threat of court order.

3. On September 10, 1993 Judge Melvin K. Soong heard the Honolulu Police Department's Motion To Quash Subpoena Duces Tecum Or, In The Alternative To Limit The Production Of Documents And Require An In Camera Inspection, filed August 16, 1993. (RA Vol. 2, pp. 202-203M) Judge Soong granted the motion and this was an error because secret arrests are illegal in American society. In addition the State of Hawaii Office of Information Practices opined that the police adult arrest blotter is public information.

4. On March 4, 1994 Judge Kevin S. C. Chang heard Defendants The Queen's Medical Center, Virginia Frelander, RN, And Sandra Proehl, RN's Motion To Compel Plaintiff Bruce Ryan Nakamura's Answers To Interrogatories, filed February 3, 1994. (RA Vol. 6, pp. 3-40) The interrogatories asked for information about audiotapes that the plaintiff-appellant properly submitted as prima facie evidence, but didn't intend to use at trial. Judge Chang was blind to the fact that the defendants failed to show how the interrogatories had defensive probative value and enigmatically ruled that plaintiff-appellant had to answer what were null interrogatories. Judge Chang also said that he wasn't going to consider the issue of admissibility which is illogical. Judge Chang's decision amounted to abuse of discretion because it clearly exceeded the bounds of reason to the substantial detriment of the plaintiff-appellant and is therefore an error.

5. On April 13, 1994 Judge Wendell K. Huddy heard Plaintiff Bruce Ryan Nakamura's Motion For An Order To Overrule Defendant Sandra Proehl, RN's Objections To Plaintiff's Second Request For Answers To Interrogatories Dated December 1, 1993, which was filed on March 17, 1994. (Vol. 6, pp. 309-374) Despite the fact that Sandra Proehl, RN, failed to show a significant change in the legal environment between February 25, 1994 and April 13, 1994, Judge Huddy completely denied appellant's motion and this was an error because Judge Virginia L. Crandall, on February 25, 1994 overruled some of Defendant Virginia Frelander, RN's identical objections to identical interrogatories. Judge Crandall's order was filed on March 17, 1994. (RA Vol. 6, pp. 375-377)

6. On May 20, 1994 Judge Melvin K. Soong heard Defendants The Queen's Medical Center, Virginia Frelander, RN, and Sandra Proehl, RN's Motion To Compel The Plaintiff's Answers To Interrogatories And Compliance With The Court's Order Filed On May 4, 1994. (RA Vol. 6, pp. 207-214) Judge Soong ordered that the audiotapes which were the subject of Defendants' null interrogatories, and submitted by the appellant as prima facie evidence, were inadmissible trial evidence, yet he contradicted himself by saying that appellant must answer inadmissible null interrogatories which is irrational and burdensome to the appellant. Judge Soong was blind to the reality that the interrogatories about the audiotapes had no defensive probative value and were consequently null. Furthermore, Judge Soong illogically sanctioned appellant $500.00 which was timely paid, for not answering null inadmissible interrogatories in advance of the hearing, instead of equitably ruling that

sanctions for not answering null inadmissible interrogatories a dead issue. Judge Soong committed abuse of discretion because his bizarre decision clearly exceeded the bounds of reason to the substantial detriment of the appellant and is therefore an error.

7. On October 19, 1994 Judge Wendell K. Huddy heard Defendants The Queen's Medical Center, Virginia Frelander, RN, And Sandra Proehl, RN's Motion To Dismiss Complaint, filed on September 14, 1994. (RA Vol. 7, pp. 324-387) Judge Huddy was blind to the fact that the null inadmissible interrogatories had no defensive probative value, and granted this motion dismissing appellant's prima facie complaint with prejudice for want of null inadmissible interrogatory evidence having no defensive probative value, an absurdity. Judge Huddy committed an error because dismissing a prima facie complaint with prejudice for want of null inadmissible evidence with no defensive probative value, after appellant already paid a $500.00 sanction, after the audiotape information was declared inadmissible, and after appellant declared that he would not [sic] using the audiotapes at future depositions, is irrational to the point of being an outrageous miscarriage of justice. In addition, Judge Huddy denied appellant the right to go to trial on triable issues of fact which is extremely unfair, particularly in view of the opinion of appellant's expert that appellant was force medicated, and is a windfall decision for the defendants because it allows them to get off the hook for want of null inadmissible evidence with no defensive probative value totally separate from the issue of medical malpractice. Judge Huddy's illogical and unsound decision to dismiss appellant's complaint with prejudice for

want of null inadmissible evidence with no defensive probative value constituted abuse of discretion because it clearly exceeded the bounds of reason to the substantial detriment of the appellant, was arbitrary, impeded justice, and is therefore an error.

STANDARD OF REVIEW

Appellant is basing his appeal on Abuse of Discretion criteria.

"[G]enerally, to constitute an abuse it must appear that the court clearly exceeded the bounds of reason or disregarded rules or principles of law or practice to the substantial detriment of a party litigant." ***State vs. Sacoco,*** 45 Hawaii 288, 292, 367 P.2d 11, 13 (1961).

" 'Discretion' of court is a liberty or privilege allowed to a judge, within the confines of right and justice, to decide an act in accordance with what is fair, equitable, and wholesome, as determined by the peculiar circumstances of the case, and as discerned by his personal wisdom and experience, guided by the spirit, principles, and analogies of the law, to be exercised in accordance with a wise, as distinguished from a mere arbitrary, use of power, and under the law." ***In Re Welisch,*** 18 Ariz. 517, at 521-522, 163 P. 264, at 265-266 (1917).

"That discretion is not without bounds, however, and it must be borne in mind that courts 'exist primarily to afford a forum to settle litigable matters between disputing parties.' " ***Mizar v. Jones,*** 157 Colo. 535, 403 P.2d 767 (1965).

"However, because dismissal of an action is a harsh remedy, the district court's discretion is not unlimited. Courts 'exist primarily to afford a forum to settle litigable matters

between disputing parties.'" ***Brymerski v. City of Great Falls,*** 195 Mont. 428, 431-32, 636 P.2d 846, 848 (1981) (quoting *Farber v. Green Shoe Mfg. Co.*, 42 Colo. App. 255, 596 P.2d 398 (1979)).

"Courts exist primarily to afford a forum to settle litigable matters between disputing parties, Brymersky [sic], *supra; a balance must be struck between judicial efficiency and a plaintiff's right to meaningful access to the justice system, Cook v. Fergus Electric Co-Op, Inc.*, (1988), 235 Mont. 173, 176, 765 P.2d 1138, 1140; *and because an involuntary dismissal is a severe result, courts should refrain from dismissing an action or claim unless there is no other adequate remedy available and the facts sufficiently call for such a result."* ***Becky v. Norwest Bank Dillon,*** 798 P.2d. 1011.

" . . . The discretion to be exercised, under the circumstances of the particular case, is a legal discretion, to be exercised in conformity with the spirit of the law and in such a manner as to subserve and not to impede or defeat the ends of substantial justice." ***Harris v. Harris,*** 65 Nev. 342, 350, 196 P.2d 402, 406 (1948).

QUESTIONS PRESENTED

1. Whereas the personnel manager of the Ala Moana Sears store, Stanley Nako ignored a subpoena to come to a deposition and bring subpoenaed records to the deposition, and whereas Stanley Nako or legal counsel for Sears failed to file any kind of papers in opposition to appellant's motion to compel Stanley Nako to come to a deposition and bring subpoenaed papers to the deposition, in accordance with the Hawaii Rules of Civil Procedure, and also failed to attend this hearing, in essence waiving the

right to object to the subpoena and hearing proceedings, was it abuse of discretion for Judge Wilfred K. Watanabe to arbitrarily excuse Stanley Nako, the personnel manager of the Ala Moana Sears store from blatant contempt of court by completely denying appellant's motion?

2. Whereas there was no indication in any of the records that appellant was a threat to any of the defendants, and whereas without standard interrogatory identification information it was impossible for the appellant to do a competent background check of the defendants, and whereas Defendant The Queen's Medical Center gave the subterfuge that since Dr. Chun was not an employee of the hospital, it had no records about Dr. Chun, ignoring the fact that The Queen's Medical Center had a credentials file for Dr. Chun, was it abuse of discretion for Judge Wilfred K. Watanabe to deny appellant standard interrogatory identification information of the defendants which made it impossible for appellant to do a competent background check?

3. Whereas secret arrests are illegal in American Society, and given that the State of Hawaii Office of Information Practices opined that police adult arrest blotter information is open to the public, was it abuse of discretion for Judge Melvin K. Soong to grant the Honolulu Police Department's Motion To Quash Subpoena Duces Tecum Or, In The Alternative To Limit The Production Of Documents And Require An In Camera Inspection, which denied appellant access to PUBLIC police arrest records?

4. Whereas on March 4, 1994 Judge Kevin S. C. Chang stated that he wasn't going to consider the issue of audiotape admissibility, and whereas appellant stated in an

earlier answer to the defendants' audiotape interrogatories preceding the March 4 hearing before Judge Chang, that appellant wasn't going to use the audiotapes at trial, (RA Vol. 6, pp. 176-193) and whereas the defendants did not show defensive probative value, was it abuse of discretion for Judge Kevin S. C. Chang to grant Defendants The Queen's Medical Center, Virginia Frelander, RN, and Sandra Proehl, RN's motion to compel answers to interrogatories about the prima facie audiotapes, and one week later rule that these same audiotapes don't have enough substance to order Bernard Ching of the Ala Moana Sears to come to a deposition with subpoenaed documents?

5. Was it abuse of discretion for Judge Wendall K. Huddy on April 13, 1994 to deny Plaintiff Bruce Ryan Nakamura's Motion To Overrule Sandra Proehl, RN's Objections To Plaintiff's Interrogatories, given that on February 25, 1994 Judge Virginia L. Crandall overruled some of Defendant Virginia Frelander, RN's identical objections to identical interrogatories, despite failure of Nurse Proehl to show a scintilla of a significant change in the legal environment?

6. Whereas Judge Melvin K. Soong declared the audiotape information inadmissible yet still required appellant to provide answers to null inadmissible audiotape interrogatories with no defensive probative value, while simultaneously sanctioning appellant $500.00, was this abuse of discretion?

7. Whereas appellant hired a medical doctor, Richard Rappaport, MD, who gave the opinion that appellant was force medicated and injured as a result, thus establishing

a prima facie case, and whereas Judge Soong previously ordered the audiotape information inadmissible, and sanctioned appellant $500.00, was it abuse of discretion for Judge Wendell K. Huddy to dismiss appellant's prima facie complaint with prejudice for want of null inadmissible evidence having no defensive probative value and deny appellant the right to go to trial on triable issues of fact?

ARGUMENT

1. It was abuse of discretion for Judge Wilfred K. Watanabe to allow the personnel manager Stanley Nako of the Ala Moana Sears store to contemptuously ignore a subpoena to come to a deposition and bring subpoenaed documents to the deposition; and to allow both Stanley Nako and Sears to disregard a motion to compel hearing that resulted from Mr. Nako's failure to attend the deposition. Both entities waived their right to object by failing to show up and neglecting to file any opposition papers in accordance with the Hawaii Rules of Civil Procedure. Appellant should have won by default.

No matter how irrational it sounds for appellant to claim that the Ala Moana Sears store, FBI, and CIA, are involved in his life, appellant is entitled to do reality checking. Consequently appellant served subpoena duces tecums on the Ala Moana Sears, FBI, and CIA.

The CIA which is a generally lawless organization that likes to assassinate people, never directly acknowledged the subpoena. The FBI filed a motion to quash subpoena which was granted, then wrote appellant that it had no records on him. Why should the FBI file a motion

to quash subpoena to withhold non-existent records? Stanley Nako and Sears did not acknowledge the subpoena nor the motion to compel hearing papers, and didn't show up for both the deposition and the motion to compel hearing. As the personnel manager, and a multi-million dollar corporate entity routinely involved in lawsuits respectively, there is no excuse for Stanley Nako to fail to attend his deposition, or for Sears not to respond to the motion to compel papers. Judge Watanabe basically let Sears get away with blatant contempt and this was abuse of discretion because it ignored the law of the subpoena, disregarded the Hawaii Rules of Civil Procedure, unfairly prevented appellant from showing that the Ala Moana Sears store was involved in his life, and was so unfairly biased in favor of Sears that it clearly exceeded the bounds of reason as defined by ***State v. Sacoco,*** as well as being arbitrary as defined by ***In Re Welisch*** and impeding justice as defined by ***Harris v. Harris.*** If Judge Watanabe's decision is not vacated, a precedent will be set such that obeying a subpoena is voluntary. Judge Watanabe mysteriously harbored Stanley Nako and Sears from reasonable discovery efforts by the appellant.

2. Even if The Queen's Medical Center didn't try to pretend that it didn't have any documents about Dr. Chun such as his credentials file, it was abuse of discretion for Judge Wilfred K. Watanabe to deny appellant standard interrogatory identification information of the defendants because it effectively denied appellant the ability to do a competent background check. Defendant The Queen's Medical Center through its legal counsel J. Gerard Lam argued, *"Insofar as Plaintiff's request relates to*

records regarding Dr. Chun, no such records exist since Dr. Chun was not an employee of QMC – a fact well-known to Plaintiff." (RA Vol. 2, p. 301) The hospital record clearly shows that appellant was not a threat to anybody nor disruptive at The Queen's Medical Center at any time. Both Defendants Virginia Frelander, RN, and Sandra Proehl, RN, are listed in the 1993 GTE Hawaiian Tel phone book, yet appellant never bothered to call them. Judge Watanabe torpedoed appellant's ability to do competent discovery which is extremely unfair to the substantial detriment of the appellant, in addition to being arbitrary and is therefore an abuse of discretion error, meeting the standard as defined by ***State v. Sacoco, In Re Welisch*** and ***Harris v. Harris***. Judge Watanabe unfairly harbored the defendants from reasonable discovery efforts.

3. It was abuse of discretion for Judge Melvin K. Soong to grant the Honolulu Police Department's (HPD) Motion To Quash Subpoena Duces Tecum Or, In The Alternative To Limit The Production Of Documents And Require An In Camera Inspection, which denied appellant access to PUBLIC police adult arrest records given that secret arrests are illegal in American Society. After Judge Watanabe let Sears get away with ignoring a subpoena, ignoring motion to compel papers, and failing to come to the motion to compel hearing, appellant tried to get collateral information by looking for shoplift arrests at the Ala Moana Sears store. According to Sam Delovio who was the Custodian of Records for the Honolulu Police Department when appellant inquired, there is a store code which allows the computer to sort out shoplift arrests by store, so finding shoplift arrests at the Ala Moana Sears

store is no problem for the computer. If truly nothing happened between appellant and the Ala Moana Sears store, there is nothing to hide. Incredibly, the City Corporation Counsel, on behalf of HPD, filed a Motion To Quash Subpoena as if it didn't have enough work to do even though it and HPD are not parties nor witnesses to the proceedings. Government attorneys tend to profess that they are overworked with cases that directly effect the agency or department they represent. Appellant wonders if any government attorney will raise his hand, imitate the Maytag washing machine repairman, and say that he doesn't have enough work to do. Humor aside, the City Corporation Counsel's primary argument was privacy of people arrested, but the Office of Information Practices (OIP) opined that police adult arrest blotter information is PUBLIC data. The OIP wrote,"*Additionally, as our research discloses, most authorities agree that because 'secret arrests' are illegal under our form of government, an arrest is a public, not a private event. As such, arrested individuals have neither a significant nor a constitutional privacy interest in the circumstances surrounding their arrest. Because there is substantially more than a 'scintilla' of public interest in the disclosure of police blotter data, and the absence of a significant privacy interest in these records, their disclosure would not constitute 'a clearly unwarranted invasion of personal privacy' under the UIPA.. [Uniform Information Practices Act]*" (RA Vol. 2, p.352)

The OIP also wrote,"*With respect to police blotter data concerning adult offenders that are maintained by the county police departments, access to this information is neither closed nor restricted by law, and under the UIPA, must be made available for inspection and copying 'upon request by any*

person,' Haw. Rev. Stat. § 92F-11(a) and (b) (Supp. 1990). Specifically, in our opinion, this information is not protected from disclosure by State or federal law, and its disclosure would not constitute a clearly unwarranted invasion of personal privacy, nor result in the frustration of a legitimate government function. Haw. Rev. Stat. § 92F-13(1) and (4) (Supp. 1990)" (RA Vol. 2, pp. 361-362)

This same OIP document quoted Chief Justice William Rehnquist as saying,*"An arrest is not a 'private event'. An encounter between law enforcement authorities and a citizen is ordinarily a matter of public record, and by the very definition of the term it involves an intrusion into a person's bodily integrity. To speak of an arrest as a private occurrence seems to me to stretch even the broadest definition of the idea of privacy beyond the breaking point."* (RA Vol. 2, p. 359)

Despite this reasoning, Judge Soong ignored the OIP conclusion and denied appellant the right to significant discovery to the appellant's substantial detriment, clearly exceeding the bounds of reason as defined by ***State v. Sacoco,*** as well as being arbitrary as defined by ***In Re Welisch*** and impeding justice as defined by ***Harris v. Harris.*** Judge Soong covered up for Sears. There is no other reason to justify why Judge Soong denied access appellant to PUBLIC police adult arrest records.

4. On March 4, 1994 Judge Kevin S. C. Chang committed abuse of discretion when he granted Defendants The Queen's Medical Center, Virginia Frelander, RN, and Sandra Proehl, RN's Motion to Compel Plaintiff Bruce Ryan Nakamura's Answers To Interrogatories filed February 3, 1994, because the interrogatories had no defensive probative value and instead jeopardized the security

of the voices on the audiotapes by asking for identification information. Both Virginia Frelander, RN, and Sandra Proehl, RN, denied during their 1993 depositions having any knowledge of a Sears videotape of the appellant and also denied having any knowledge of a CIA brainwash manipulation scheme. Judge Chang's arbitrary decision clearly exceeded the bounds of reason as defined by ***State v. Sacoco,*** as well as being arbitrary as defined by ***In Re Welisch*** and impeding justice as defined by ***Harris v. Harris.***

A partial transcript of the hearing was ordered on June 9, 1995 and reads as follows:

THE COURT: Mr. Nakamura?

THE PLAINTIFF: Well, this case can be look[ed] at two ways. The first, let's say that the information on the tape is false, that plaintiff obviously suffering from absurd delusions. Then Mr. Bordner knows that everybody on the jury knows that there was no Sears videotape of the plaintiff, that there is no brainwash manipulation plot to make plaintiff a future U.S. President. So what's going to happen is that the jury is going to say: This plaintiff is crazy.

THE COURT: Well, Mr. Nakamura, the issue really before the court is not one with regards to how evidence is going to be used and whether it's going to be admissible and how it's going to be perceived by the trier of fact. This issue is one of discovery. So let's try and stay within that–

THE PLAINTIFF: Well, Okay, if I may, Your Honor, show that it's illogical because in the end the jury is going to say that: This person is so insane that he's mentally incompetent, therefore he's legally incompetent, he couldn't

have possibly given legal consent for anything, therefore he was force medicated. He's [Mr. Bordner] is going to undo his own case.

But let's say that the audiotapes are true. Then why would he [Mr. Bordner] want the information? I mean if the audiotapes are true, then it's going to prove that Sears did take a videotape of the plaintiff, that there is a brainwash manipulation plot going on and it's going to undo the [Mr. Bordner's] case because it's going to show that plaintiff was a political prisoner at the hospital, see. So whether it's false or whether it's true, there can be only one reason why he [Mr. Bordner] wants that information, and that's to intimidate the witnesses into withdrawing their statements.

For Judge Chang not to consider the issues of admissibility and being reasonably calculated to lead to anything discoverable is to show a lack of discernment, and a person without perspicacious discernment should not be a judge. An objective person can see that if a covert societal brainwash manipulation scheme is occurring on the basis that the appellant is not supposed to know, individuals providing information contrary to such a secret societal government scheme would certainly be at risk. It is not selfish for the appellant to protect the voices on the audiotapes from duress even if he were truly deluded.

As evidence that the appellant did not withhold the names of the voices for selfish reasons, suppose the voice speaking about the CIA brainwash manipulation scheme is Mrs. Jim Schroeder, and the voice talking about the broadcast of the Sears videotape is Mrs. Anthony Stephanatos. The assumption is that the defendants would

want to take their depositions in an attempt to prove the audiotapes fake. Suppose Mrs. Schroeder and Mrs. Stephanatos testify at their hypothetical depositions that they just felt sorry for the obviously deluded appellant and went along with making fake audiotapes to humor appellant and make him feel better. How does such hypothetical testimony show that force medication or medical malpractice did not take place? Instead, such testimony would tend to show that the appellant was so seriously deluded, that questions as to his mental competence to give legal consent for psychiatric treatment and medication would arise. The audiotapes don't mention or even allude to the defendants nor talk about force medication so altogether the interrogatories weren't even remotely calculated to lead to anything discoverable having defensive probative value and Judge Chang had to know that. Since the audiotapes don't talk about the defendants nor force medication, even if the defendants could prove the audiotapes fake, that still doesn't imply that force medication or medical malpractice did not occur. **It is the nature of a deluded person not to see himself as deluded so there is no reason for him to consent to expensive psychiatric treatment that he believes he doesn't need!** Therefore for a deluded person to be treated and medicated for delusions that he believes are not delusions, the treatment would inevitably have to be against his will. If the audiotapes are true, then the defendants are goners, because appellant is not suffering from delusions and consequently had to be getting unnecessary anti-delusion medication against his will because there is no reason for a person who is not deluded to take anti-delusionary medicine. The crux of this argument is

that appellant did not withhold the names of the voices on the audiotapes for selfish reasons, that is to say that disclosing the names would hurt his case because as was logically shown above, identifying the voices won't hurt his case, but it will make the people to whom the voices belong to, vulnerable to duress. It was a desire to protect the voices from duress that he decided not to identify the voices on the audiotapes and this is not a selfish reason even if appellant were deluded. As stated earlier, it is logically apparent that anybody providing information to a covert societal government sponsored brainwash manipulation scheme is going to be at risk.

One week after this March 4 hearing, Judge Chang ruled that the same audiotapes didn't have enough substance to order Bernard Ching of the Ala Moana Sears to come to a deposition with subpoenaed documents. Judge Chang was using a double standard of relevance, which was if the motion helps the defendants, grant it, if the motion helps the appellant, deny it. Consequently, Judge Chang's ruling was very unfair and put an unnecessary burden on the appellant that ultimately turned out to appellant's substantial detriment and is an abuse of discretion error clearly exceeding the bounds of reason as defined by ***State v. Sacoco,*** as well as being arbitrary as defined by ***In Re Welisch*** and impeding justice as defined by ***Harris v. Harris.*** Judge Chang cannot say that he didn't understand the full context of the March 4 and March 11 motions heard by him and still say that he has the perspicacity needed to be a competent judge. Judge Chang was helping the defendants and covering up for Sears.

5. On April 13, 1994 Judge Wendell K. Huddy heard Plaintiff Bruce Ryan Nakamura's Motion For An Order To Overrule Defendant Sandra Proehl, RN's Objections To Plaintiff's Second Request For Answers To Interrogatories Dated December 1, 1993, which was filed on March 17, 1994. (RA Vol. 6, pp. 309-374) Despite the fact that Sandra Proehl, RN, did not argue a significant change in the legal environment between February 25, 1994 and April 13, 1994, Judge Huddy completely denied appellant's motion and this was an error because Judge Virginia L. Crandall, on February 25, 1994 overruled some of Defendant Virginia Frelander, RN's identical objections to identical interrogatories. This outcome shows Judge Huddy's arbitrary bias in favor of the defendants which ultimately turned out to the substantial detriment of the appellant clearly exceeding the bounds of reason as defined by ***State v. Sacoco,*** as well as being arbitrary as defined by ***In Re Welisch*** and impeding justice as defined by ***Harris v. Harris.***

6. On May 20, 1994 Judge Melvin K. Soong committed abuse of discretion when he granted Defendants The Queen's Medical Center, Virginia Frelander, RN, and Sandra Proehl, RN's Motion To Compel Plaintiff's Answers To Interrogatories And Compliance With The Court's Order Filed On May 4, 1994, because Judge Soong ordered that the audiotapes which were the subject of Defendants' interrogatories, and submitted by the appellant only as prima facie evidence, were henceforth inadmissible for purposes of appellant's litigation. Yet Judge Soong contradicted himself by ruling in effect that appellant must answer inadmissible interrogatories that are

null due to no defensive probative value which is irrational because the defendants are not named nor even alluded to on the audiotapes, and nothing is said about force medication. Significantly, Judge Soong ruled in essence that the audiotapes interrogatories were not useful to the defendants, hence his inadmissible evidence ruling that Judge Soong **obviously believed would not hamper the defense.** Furthermore, Judge Soong illogically sanctioned appellant $500.00 which appellant timely paid, for not answering null inadmissible interrogatories in advance of the hearing, instead of equitably ruling that sanctions for not answering null inadmissible interrogatories a dead issue.

Defendants The Queen's Medical Center, Virginia Frelander, RN, and Sandra Proehl, RN, argued in their supplemental memorandum filed May 25, 1994 (RA Vol. 7 pp. 1-16) *"The existence of a conspiracy, if any, and Mr. Nakamura's honest beliefs about the existence of the conspiracy are central to the question of his psychiatric diagnosis. Whether or not treatment was appropriate depends on the accuracy and appropriateness of the diagnosis. If defendants are deprived of the opportunity to determine whether or not the tape recordings upon which Mr. Nakamura bases his 'prima facie case' are legitimate, then Defendants would have been deprived of a fair opportunity to prepare their defense."*

This was a clever misleading obfuscation. If appellant were deluded then he was force medicated because it is the nature of a deluded person not to see himself as deluded, so there is no reason for the deluded appellant to consent to expensive psychiatric treatment and medication he truly believes he does not need. Thus, for a deluded person to take anti-delusionary medicine, by

logical reasoning it has to be against the will of the deluded person. If the appellant weren't deluded, then he was definitely force medicated with unnecessary anti-delusion medicine, and means that Dr. Chun made a wrong diagnosis. **So whether appellant was or was not deluded, whether Dr. Chun was right or wrong in his diagnosis, and whether the audiotapes are true or fake, based upon logical reasoning, force medication must have occurred**, and for the appellant to have answered who, when, and where the audiotapes were made, **cannot change the logical conclusion that force medication must have occurred!** This reasoning is logical proof that the audiotape interrogatories were not reasonably calculated to lead to anything discoverable having defensive probative value. The reasoning of the defendants that answers to the audiotape interrogatories were needed to explore Dr. Chun's diagnosis of appellant being deluded, to prepare the defense is specious, because whether Dr. Chun was right or wrong in his diagnosis, force medication must have occurred. This means that the issue of a correct diagnosis on the part of Dr. Chun has no defensive probative value.

In addition, the rightness or the wrongness of Dr. Chun's diagnosis does not by itself provide a defense for the nurses and the hospital they work for, since diagnosis and informed consent are not directly connected points of argument on an if-then logical reasoning basis. It does not follow that if Dr. Chun's were correct in his diagnosis of delusions on the part of appellant, then force medication did not occur, because a deluded person does not see himself as deluded and so has no reason to consent to expensive psychiatric treatment and medication that he

truly believes he doesn't need. If Dr. Chun were wrong in his diagnosing the appellant as deluded, then the non-deluded appellant was given anti-delusionary medicine for a non-existent condition. The logic shows that the audiotape interrogatories weren't even remotely calculated to lead to anything discoverable of defensive probative value to The Queen's Medical Center, Nurses Frelander and Proehl, as well as Dr. Chun. Judge Soong committed abuse of discretion because his bizarre decision clearly exceeded the bounds of reason as defined by ***State v. Sacoco,*** as well as being arbitrary as defined by ***In Re Welisch*** and impeding justice as defined by ***Harris v. Harris,*** as well as putting a frivolous burden on appellant. Judge Soong didn't get to be a judge by being stupid and nonsensical. Judge Soong was unfairly assisting the defendants.

7. On October 19, 1994 Judge Wendell K. Huddy heard Defendants The Queen's Medical Center, Virginia Frelander, RN, and Sandra Proehl, RN's Motion To Dismiss Complaint, filed on September 14, 1994 because they did not get the identities of the voices on the audiotapes. (RA Vol. 6 pp. 324-387) This was the third motion filed regarding the audiotapes. Defendants The Queen's Medical Center, et al, wrote in their support memorandum that appellant asked a Ms. Lynn Nakamoto during her deposition on July 7, 1994 about her knowledge of a Sears videotape of the appellant and a CIA brainwash manipulation scheme involving the appellant. Ms. Nakamoto denied any knowledge of both a Sears videotape and a CIA brainwash manipulation scheme. Defendants The Queen's Medical Center, et al, argued that not having the names of the voices hampered the ability to prepare a

defense. This is misleading because there is no need to prepare a defense for inadmissible evidence. Since Ms. Nakamoto denied any knowledge of what the audiotapes were talking about, there is no connection between Ms. Nakamoto and the audiotapes. Furthermore, Ms. Nakamoto cannot testify as to whether medical malpractice took place because she is not a medical doctor, nor was she a witness to the appellant's allegations of medical malpractice. There is no need for Mr. Bordner to prepare a defense against anything Ms. Nakamoto said. The only way Defendants The Queen's Medical Center, Virginia Frelander, RN, and Sandra Proehl, RN, can show a link between Ms. Nakamoto and the audiotapes is by proving the audiotapes true and simultaneously strongly implying that Ms. Nakamoto perjured herself when she testified as to having no knowledge of what the audiotapes are referring to. The argument of Defendants The Queen's Medical Center, Virginia Frelander, RN, and Sandra Proehl, RN, was merely a baseless specious pretext to file a motion for dismissal.

Be that as it may, Judge Huddy was blind to the fact that the null inadmissible interrogatories have no defensive probative value and granted this motion dismissing appellant's prima facie complaint with prejudice for want of null inadmissible interrogatory information having no defensive probative value. Judge Huddy committed an abuse of discretion error because dismissing a prima facie complaint with prejudice for want of null inadmissible evidence with no defensive probative value is clearly excessive, extreme, and irrational. Instead, Judge Huddy should have sanctioned Defendants The Queen's Medical Center, Virginia Frelander, RN, and Sandra Proehl, RN,

for wasting the court's time in seeking null inadmissible evidence with no defensive probative value, a dead issue. In addition Judge Huddy denied appellant the right to go to trial on triable issues of fact which is extremely unfair and is a windfall decision for the defendants because it allows them to get off the hook for want of null inadmissible evidence with no defensive probative value totally separate from the issue of force medication or medical malpractice, especially considering that none of the defendants hired medical experts to refute the opinion of Dr. Richard Rappaport that appellant was force medicated. Judge Huddy's illogical and unsound decision to dismiss appellant's prima facie complaint with prejudice for want of null inadmissible evidence with no defensive probative value clearly exceeded the bounds of reason to the substantial detriment of the appellant and constituted abuse of discretion as defined by ***State v. Sacoco, In Re Welisch, Harris v. Harris, Mizar v. Jones, Brymerski v. City of Great Falls,*** and ***Becky v. Norwest Bank Dillon.*** During this hearing Judge Huddy conducted discovery on behalf of the defendants as follows:

THE COURT: Who has the audiotapes?

MR. NAKAMURA: I am in possession of the audiotape.

THE COURT: How many of them are there?

MR. NAKAMURA: Those two that I presented.

THE COURT: Are there others?

MR. NAKAMURA: You have to ask me – don't you have to ask me by way of interrogatory?

THE COURT: Consider that to be an interrogatory.

MR. NAKAMURA: Off the top of my head I cannot answer the question.

THE COURT: Are there – there are others then?

MR. NAKAMURA: I cannot answer the question accurately, and I will not answer a question that might not be an accurate answer.

THE COURT: And why would it not be an accurate answer?

MR. NAKAMURA: Pardon me?

THE COURT: Why would it not be an accurate answer?

MR. NAKAMURA: Because I have – except of these two audiotapes, I'm not consciously aware of what is in my inventory.

THE COURT: You have an inventory?

MR. NAKAMURA: No, I don't have an inventory, I should say, what is in my collection, or, you know, what I have.

THE COURT: You hired an expert in this case?

MR. NAKAMURA: My expert is Dr. Richard G. Rappaport.

THE COURT: Does he have any copies of those audiotapes?

MR. NAKAMURA: I believe I might have sent him a copy.

THE COURT: How many?

MR. NAKAMURA: One copy of each tape.

THE COURT: And how many audiotapes?

MR. NAKAMURA: Total of two audiotapes.

THE COURT: Only two?

MR. NAKAMURA: Yes.

THE COURT: Now, why would he have those audiotapes?

MR. NAKAMURA: Why would he have those audiotapes?

THE COURT: Well, what do you intend him to use those audiotapes for?

MR. NAKAMURA: Well, he has to have the full context of the situation. And the defense attorney for Queen's Medical Center is saying that since Dr. Rappaport relied in part, at least, as I understand the argument, that they would be entitled to have further questions answered about those audiotapes. But my recollection is that Dr. Rappaport used those audiotapes to conclude that I'm mentally ill, that I'm deluded, (RA Vol. 9, p. 303)

It can be seen that Judge Huddy is conducting discovery on behalf of the defendants that grossly exceeds the area of the two audiotapes that Defendants The Queen's Medical Center, Virginia Frelander, RN, and Sandra Proehl, RN, were concerned about. This together with his decision on April 13, 1994 not to overrule Sandra Proehl, RN's identical objections to identical interrogatories issued to Virginia Frelander, RN; despite the fact that Judge Virginia L. Crandall on February 25, 1994 overruled some of Nurse Frelander's identical objections to

identical interrogatories is indicative of Judge Huddy's flagrant and unjust bias in favor of the defendants.

In their support memorandum filed September 14, 1994, Defendants The Queen's Medical Center, Virginia Frelander, RN, and Sandra Proehl, RN, wrote, *"It is clear that Dr. Rappaport in arriving at his assessment of Plaintiff relied, at least in part, on the tapes and transcriptions which are the subject of the interrogatories served by Defendants on Plaintiff."* (RA Vol 7, p. 331)

Here, Defendants The Queen's Medical Center, et al, are speculating because they did not take Dr. Rappaport's deposition nor issue any interrogatories to Dr. Rappaport.

On behalf of Defendant Theodore Chun, MD, Defense Counsel Miss Kwiatkowski wrote in her joinder to dismiss filed September 21, 1994, *"Given the apparent importance of the audiotapes to Plaintiff, we are concerned that Plaintiff will continue to use the audiotapes or the transcript of the audiotapes in questioning witnesses. Perhaps more importantly, we are concerned with Plaintiff providing either the audiotapes or transcripts of the audiotapes to expert witnesses. It is difficult if not impossible, to cross-examine a witness about an audiotape when one does not know the identity of everyone speaking on an audiotape and the circumstances under which the audiotape was made. We do not know if the two audiotapes were made at the same time, at different times, or whether both are excerpts from more extensive tapes."* (RA Vol. 7, p. 409) Appellant says that the defendants need not be concerned about inadmissible audiotape evidence with no defensive probative value. To allay the concerns of the defendants, appellant declared in legal response to Judge Huddy's weird discovery order of October 19, 1994

that "Plaintiff hereby agrees not to use this audiotape at further depositions." and this declaration should have settled the matter. The certificate of service for this declaration was filed on November 3, 1994. (RA Vol. 8, p. 408-409) Dr. Rappaport doesn't know anything more about the audiotapes than Mr. Bordner and Miss Kwiatkowski. The audiotapes that Dr. Rappaport received from appellant are identical copies to the audiotapes played at the depositions and are identical to the audiotapes sent to the defendants by way of their lawyers. Since the audiotapes do not mention or even allude to any of the defendants or hint of force medication, Dr. Rappaport cannot rely on the audiotapes to base his opinion that force medication took place even if the audiotapes were admissible evidence. However, since Judge Soong ruled that the audiotapes are inadmissible, no expert can rely on the audiotapes to base an opinion that force medication did or didn't occur. There is no doubt though, that if and when the defendants hire experts to prepare their defense, their experts will listen to the audiotapes, so Dr. Rappaport does not have an unfair advantage over hypothetical defense experts from the audiotapes. Furthermore the only defense to the allegation of force medication is that all treatment and medication was pursuant to voluntary informed consent, which is going to be impossible to show given that **there is no reason for a deluded person believing himself not to be deluded, to agree to take anti-delusionary medicine that he truly believes he does not need.** To argue that, the defense lawyers have to hire their own experts who are willing to testify that force medication did not occur, despite what Defendant Theodore Chun, MD wrote in

appellant's medical records, and despite the logical reasoning that a deluded person does not see himself as deluded and so has no reason to consent to expensive psychiatric treatment and medicine that he truly believes that he does not need. Defense experts are expected to point out forms appellant signed while at The Queen's Medical Center as evidence of consent, but the Intermediate Court of Appeals of the State of Hawaii stated the following opinions in Supreme Court No. 14174, ***Richard Keomaka, Plaintiff-Appellant v. George Zakaib, MD, Defendant-Appellee,*** under the heading *"PHYSICIANS AND SURGEONS – acts or omissions constituting negligence or malpractice – particular acts or omissions of regular physicians and surgeons – disclosure to patient.*

The doctrine of informed consent imposes on physicians or surgeons the duty to fully disclose to a patient the type of risks and alternatives to a proposed treatment or surgery." (Hawaii Supreme Court No. 14174, p. 285 and 811 P.2d 478)

On pages 287-288 of document 14174, the Intermediate Court of Appeals wrote, *"A physician may not fulfill his affirmative duty of timely and adequate disclosure by merely having the patient sign a printed informed consent form. A signed consent form is not a substitute for the required disclosure by a physician."*

Appellant is prepared to testify at trial that all forms he signed at The Queen's Medical Center was under Dr. Chun's threat of being taken to court if he did not sign, which cannot be voluntary consent.

As stated above, appellant expects that the experts of the defendants will hear the same audiotapes Dr. Rappaport did, so there is no unfair advantage. Obviously Dr.

Rappaport cannot talk about the inadmissible audiotapes in court. The argument that without knowing who provided the audiotape information, when was it provided, where was it provided, and whether the voices were paid; it is not possible to divine the purpose or relevance of the audiotapes or transcripts to appellant's claim is specious, because defendants NEVER ASKED APPELLANT BY WAY OF INTERROGATORY OR DEPOSITION WHAT IS THE RELEVANCE OF THE AUDIOTAPES TO HIS CLAIM! Appellant surmises that the reason why the defendants didn't ask him the relevance of the audiotapes to his claim, is that the defendants really don't care, because all information and opinions about the audiotapes are inadmissible. As far as the jury is concerned, the audiotapes don't even exist. Pursuant to the appellant's allegation that a brainwash manipulation scheme is going on, appellant argues that defendants wanted to be able to directly or indirectly communicate with the voices on the audiotapes to get them not to provide additional information contrary to the brainwash plot because showing the audiotapes to be fake does not prove informed consent. If the audiotapes are fake, why are the defendants spending so much time, a total of three motions, trying to get inadmissible evidence that cannot show or even imply informed consent? The defendants are being ostensibly irrational. The defendants should be hiring experts to testify that force medication did not take place, though their medical experts will have an impossible task of refuting appellant's logical reasoning: **It is the nature of a deluded person not to see himself as deluded, and so he would not voluntarily agree to take**

expensive anti-delusionary medicine and hospitalization that he truly believes he doesn't need. Conversely, if a non-deluded patient is made to take anti-delusionary medicine while involuntarily confined at a hospital, it must be without his informed consent since the diagnosis was wrong!

During the same October 19, 1994 hearing, Judge Huddy considered Plaintiff Bruce Ryan Nakamura's Motion For An Order For Defendant The Queen's Medical Center To Make An Index Of All Documents In Its Possession Related To Civil No. 92-2171-06, filed on August 22, 1994. (RA Vol. 7, pp. 155-201) Appellant argued that a review of the papers turned over by The Queen's Medical Center showed nothing to indicate that there is a lawsuit going on, or that a complaint of force medication against any of the defendants was received. One would expect to see disclosure papers in the credentials file of Dr. Chun, and the personnel files of Virginia Frelander, RN, and Sandra Proehl, RN, stating that a legal complaint of force medication was received and that the matter is in litigation at this time. Dr. Chun's attorney, Anne S. Kwiatkowski wrote in her support memorandum for Dr. Chun's Motion For Reconsideration Of Order Granting Plaintiff Bruce Ryan Nakamura's Ex parte Motion For An Order Granting A Third Extension To File Pretrial Statement Filed March 14, 1994, which in turn was filed on March 30, 1994, (RA Vol. 6, pp. 1-66) *"When a physician is sued for malpractice, he must continue to report the existence of the lawsuit every time he applies for privileges at a hospital."* (RA Vol. 6, p. 11)) Dr. Chun testified at his deposition that he properly notified The Queen's Medical Center that he had been sued. (RA Vol. 7, p. 225 lines

17-25, p. 226 lines 3-10) Yet repeated searches by the appellant of all papers turned over to him regarding all of the defendants show no evidence that any of them reported anything about being sued to The Queen's Medical Center. Throughout the various hearings about documents in The Queen's Medical Center's possession, the hospital has repeatedly insisted that all documents have been turned over. Appellant's expert Dr. Rappaport, who was a hospital administrator, stated that this lack of disclosure documents was not normal. (RA Vol. 7, pp. 196, 198) However, Judge Huddy didn't ask The Queen's Medical Center how the lack of certain documents from the files of the defendants indicating that a lawsuit alleging force medication is going on, could be a normal situation. Instead Judge Huddy asked the defendants for an index of documents in their possession for the court's eyes only, and never intended to inform appellant as to whether the court was satisfied that no documents were missing. Under these circumstances, why should the court bother to ask defendants to make an index of documents in their possession? If Defendant The Queen's Medical Center in particular, had nothing to hide, it would have been no problem for the hospital to send appellant a copy of the index and prove to appellant that documents are not missing. Judge Huddy's behavior in which he conducted discovery on behalf of the defendants, while carefully avoiding asking The Queen's Medical Center about possible missing disclosure documents, was indicative of flagrant unjust bias in favor of the defendants such that it was abuse of discretion. Judge Huddy could have asked The Queen's Medical Center to verbally answer right then and there, why are there no

disclosure documents in the files of all the defendants given that appellant's expert stated that the lack of disclosure documents was not normal. Instead Judge Huddy simply asked defendants for an index that he never intended to show appellant. After multiple notices of production of records and hearings, including a discovery conference, trying to get documents from The Queen's Medical Center for well over a year, appellant is now certain that the missing disclosure documents were not created or were destroyed to evade a legal process, and to pretend that what happened did not happen.

Backing up a bit, on August 18, 1993 Plaintiff Bruce Ryan Nakamura's Motion For An Order to Convene A Discovery Conference With Defense Attorneys, was filed because appellant was convinced documents were missing from the files of The Queen's Medical Center. (RA Vol. 2, pp. 204-288) The discovery conference was held in Judge Melvin K. Soong's chambers on October 15, 1993. Present were appellant, Miss Kwiatkowski for Dr. Chun, and Mr. Bordner for QMC and the nurses. In regards to what appellant alleged were missing documents, the conference was a waste of time. Judge Soong didn't query QMC about disclosure documents that he had to know were missing. As mentioned earlier, Judge Soong didn't get to be a judge by being stupid.

An impartial outer space council is likely to say, *"We of the Lodestar Cosmic Command Council, having reviewed the same material given to the Hawaii Supreme Court, no more and no less, offer the following concise opinion. Judges Watanabe, Soong, and Chang frustrated appellant's efforts to get reasonable discovery regarding appellant's allegation that the Ala Moana Sears store libeled him. Judge Watanabe's allowing*

Stanley Nako and Sears to get away with blatant contempt of court is inexplicable; the blocking by Judge Soong of appellant's efforts to get public police records of adult shoplift arrests at the Ala Moana Sears store; and Judge Chang's refusal to order Bernard Ching of the Ala Moana Sears to come to a deposition; leads the Council to conclude that there is probable cause to believe that there was some sort of incident between Sears and appellant. If in reality, nothing happened, between appellant and Sears, it wasn't necessary for Judges Watanabe, Soong, and Chang, to block appellant's discovery motions concerning Sears. For Judge Soong to deny appellant access to public police adult arrest records is analogous to a cover up. There is no other logical rationale to justify the decisions by Judges Watanabe, Chang, and Soong, than to say that they behaved in such an arbitrary, mysterious, and biased way adverse to the appellant, that there is a valid basis to uphold his appeal on their decisions individually or altogether.

The Council does not understand why Judge Wendell K. Huddy on April 13, 1994 refused to overrule Sandra Proehl, RN's objections to appellant's interrogatories given that Judge Virginia L. Crandall overruled Defendant Virginia Frelander, RN's identical objections to identical interrogatories six weeks earlier on February 25, 1994 with Nurse Proehl not offering even a scintilla of indication that the legal environment changed between the two dates. It is the conclusion of the Council that Judge Huddy gave unfair excessive consideration to Nurse Proehl.

The Lodestar Cosmic Command Council does agree that appellant has established a prima facie case with his expert offering the opinion that medicine was administered to appellant without his permission, causing the production of both physical and emotional symptoms. The Council also concurs

that it is the nature of a deluded person not to see himself as deluded, and so he would have no reason to voluntarily take expensive psychiatric medicine and treatment that he truly believes he does not need. So therefore for a deluded person to take anti-delusionary medicine that he truly believes he does not need, it must necessarily be against his will, especially when he was involuntarily confined in the locked section of Queen's Medical Center which prevented him from leaving on his own volition.

Regarding the audiotapes decisions by Judges Chang, Soong and Huddy, the Council agrees that since the voices on the audiotapes do not mention force medication of the appellant nor even hint about any knowledge of the defendants, and that whether the audiotapes are true or false, force medication could have occurred, the audiotapes have no defensive probative value. The defendants and all third parties subpoenaed denied knowing anything about what the audiotapes speak of, yet repeated efforts were made by the defendants to get the identities of the voices on the audiotapes even after the material was declared inadmissible, which to the Council is an illogical waste of time – unless the audiotapes spoke truthfully, showing that appellant was not deluded, and then the security of the voices would indeed be in jeopardy.

Finally, the Lodestar Cosmic Command Council concludes that Judge Huddy unfairly conducted discovery on behalf of the defendants and allowed this medical malpractice litigation to degenerate into an absurd obsession about null inadmissible audiotapes with no defensive probative value, and by dismissing appellant's prima facie case for want to null inadmissible audiotape interrogatory answers with no defensive probative value, denied appellant the right to take his prima facie case to trial on triable issues of fact. Dismissing a prima facie case,

especially, for want of null inadmissible evidence having no defensive probative value is unjustifiable. There is no other explanation except to say that Judge Huddy abused his discretion and mishandled the dismissal hearing. We the members of the Lodestar Cosmic Command Council would uphold appellant's appeal on all points of error.

CONCLUSION

Dismissing a diligently prosecuted prima facie case prior to trial for want of inadmissible evidence with no defensive probative value, given that appellant's expert is prepared to testify that force medication occurred, given that no defense experts have been named, and no defense depositions have been taken, was extremely excessive to the point of being outrageous. *"[A] district court should be more reluctant to dismiss with prejudice when the underlying action is meritorious."* ***Home Saving Association v. Aetna Casualty and Surety Company*** 854 P.2d 851 (Nev. 1993) Appellant spent about $258.00 searching the Westlaw computerized legal database for any other cases dismissed with or without prejudice for want of inadmissible evidence in the United States and couldn't find a single one.

1. Judge Watanabe allowed Stanley Nako and Sears to get away with blatant contempt, and if his decision is not vacated, precedent will be established that obeying a subpoena is a voluntary act. This will also mean that it was perfectly acceptable for Police Officer Gary Goeas to ignore appellant's subpoena to come to a deposition as if he never got it.

2. Judge Watanabe also torpedoed appellant's ability to do competent background checks by denying appellant standard interrogatory identification information of the defendants, while ignoring The Queen's Medical Center's attempt to hide Dr. Chun's credentials file which is an evasion of a legal process.

3. Judge Soong then buttressed Judge Watanabe's Stanley Nako ruling by denying appellant access to collateral information regarding adult shoplift arrests at the Ala Moana Sears store from PUBLIC police records, which amounted to a cover up on behalf of Sears.

The Nevada Supreme Court stated, " . . . *The discretion to be exercised, under the circumstances of the particular case, is a legal discretion, to be exercised in conformity with the spirit of the law and in such a manner as to subserve and not to impede or defeat the ends of substantial justice.*" ***Harris v. Harris,*** 65 Nev. 342, 350, 196 P.2d 402, 406 (1948).

4. Judge Kevin S. C. Chang granted Defendants The Queen's Medical Center, Virginia Frelander, RN, and Sandra Proehl, RN's motion to compel appellant's answers to the audiotape interrogatories concerning the identities of the voices on the audiotapes despite failure of the defendants to show defensive probative value, and despite failure of the defendants to ask appellant what the relevance of the audiotapes were to his complaint. One week after granting this motion, Judge Chang contradictorily and arbitrarily ruled that the same audiotapes didn't have enough substance to order Bernard Ching of the Ala Moana Sears store to come to a deposition with subpoenaed documents. This is irrationally unfair.

5. Judge Wendell K. Huddy demonstrated unfair bias in favor of Defendants The Queen's Medical Center, et al, when he refused to overrule Nurse Proehl's objections even though Judge Virginia L. Crandall six weeks earlier overruled Defendant Virginia Frelander's identical objections to identical interrogatories, despite the failure of Defendant Sandra Proehl, RN, to show even a scintilla of a significant change in the legal environment.

6. Judge Melvin K. Soong made a bizarre irrational ruling when he decreed that the audiotape interrogatory information is inadmissible, yet appellant must answer null inadmissible, interrogatories, and simultaneously pay a $500.00 sanction.

7. Finally, Judge Huddy dovetailed Judge Soong's bizarre decision by dismissing appellant's prima facie case with prejudice for want of null inadmissible interrogatory information having no defensive probative value. Of all the questionable decisions, Judge Huddy's decision to dismiss appellant's prima facie case for want of null inadmissible evidence with no defensive probative value was the worst. The United States Supreme Court said, *" . . . a person's right to his day in court is basic to our very system of jurisprudence."* ***In re Oliver,*** 333 U.S. 257, 68 S.Ct. 499, 92 L.Ed. 682 (1948). The Montana Supreme Court stated, *"However, because dismissal of an action is a harsh remedy, the district court's discretion is not unlimited. Courts 'exist primarily to afford a forum to settle litigable matters between disputing parties.' "* ***Brymerski v. City of Great Falls,*** 195 Mont. 428, 431-32, 636 P.2d 846, 848 (1981) (quoting *Farber v. Green Shoe Mfg. Co.,* 42 Colo. App. 255, 596 P.2d 398 (1979)).

It is appellant's overall conclusion that various Circuit Court judges involved in his case lost sight that this is a medical malpractice action, and instead got entangled in covering up for Sears, siding with the defendants, and becoming obsessed with null inadmissible audiotapes with no defensive probative value, as if the litigation were only about the inadmissible audiotapes, a preposterous situation.

For all of the aforementioned reasons, appellant moves the Hawaii Supreme Court to: (1) vacate and reverse the decision of Judge Wilfred K. Watanabe and order Stanley Nako to prepare for a deposition and bring subpoenaed documents with him, or precedent will be set that obeying a subpoena is voluntary; (2) vacate and reverse the decision of Judge Wilfred K. Watanabe not to order defendants to provide standard interrogatory information such as their addresses, telephone numbers, dates of birth, and social security numbers, and instead require defendants to do so; (3) vacate and reverse Judge Melvin K. Soong's decision to grant the Honolulu Police Department's Motion To Quash Subpoena, and order HPD to turn over the public information subpoenaed by appellant regarding adult shoplift arrests at the Ala Moana Sears store; (4) vacate Judge Chang's order to compel appellant to answer audiotape interrogatories; (5) vacate and reverse Judge Wendell K. Huddy's decision not to overrule Defendant Sandra Proehl, RN's objections to appellant's interrogatories, and order Nurse Proehl to answer the same interrogatories that Judge Virginia L. Crandall ordered Defendant Frelander to answer; (6) vacate Judge Melvin K. Soong's order to compel appellant to answer null inadmissible interrogatories with no

defensive probative value; (7) vacate Judge Wendell K. Huddy's order to dismiss appellant's complaint with prejudice for want of null inadmissible evidence with no defensive probative value; and remand appellant's prima facie case back to First Circuit Court for scheduling for trial

Appellant closes his opening brief with the words that are attributed to former Chief Justice of the United States Supreme Court Earl Warren, "It is the spirit and not the letter of the law that gives justice life. For the letter kills, but the spirit heals."

DATED: Honolulu, HI July 3, 1995

/s/ Bruce Ryan Nakamura
Bruce Ryan Nakamura
Plaintiff-Appellant Pro Se

NO. 18890

IN THE SUPREME COURT OF THE STATE OF HAWAII

BRUCE RYAN NAKAMURA Plaintiff Pro Se-Appellant vs. THEODORE CHUN, MD QUEEN'S MEDICAL CENTER VIRGINIA FRELANDER, RN SANDRA PROEHL, RN Defendants-Appellees	APPEAL FROM THE ORDER FILED NOVEMBER 22, 1994 DISMISSING CIVIL NO. 92-2171-06 HONORABLE THOMAS K. KAULUKUKUI, JR. HONORABLE MELVIN K. SOONG HONORABLE VIRGINIA L. CRANDALL HONORABLE KEVIN S.C. CHANG HONORABLE COLLEEN HIRAI HONORABLE RUSSELL NAGATA HONORABLE HERBERT K. SHIMABUKURO HONORABLE WILFRED K. WATANABE HONORABLE WENDELL K. HUDDY

STATEMENT OF RELATED CASES

Appellant is not aware of any related cases pending before the Hawaii Courts or agencies.

DATED: Honolulu, HI July 3, 1995

/s/ Bruce Ryan Nakamura
Bruce Ryan Nakamura
Plaintiff-Appellant Pro Se

APPENDICES

1. *Hawaii Revised Statutes,* Section 641-1
2. *Hawaii Revised Statutes,* Section 671-1 (2)
3. *Hawaii Revised Statutes,* Section 671-3
4. *Hawaii Revised Statutes,* Section 602-5
5. *Hawaii Revised Statutes,* Section 602-57
6. *Hawaii Rules of Appellate Procedure,* Rule 3
7. *Hawaii Rules of Appellate Procedure,* Rule 4 (a)

CERTIFICATE OF SERVICE

I hereby certify that a copy of Plaintiff-Appellant Bruce Ryan Nakamura's Opening Brief was duly served to Defendant Theodore Chun, MD; Defendants The Queen's Medical Center, Virginia Frelander, RN, and Sandra Proehl, RN; Honolulu Police Department, and Sears, Roebuck and Company; respectively, by being mailed postage prepaid to the following named attorneys at their last known addresses on July 3, 1995:

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DATED: Honolulu, HI July 3, 1995

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